SUPREME COURT OF THE UNITED STATES.

No. 77.

DANIEL GARRARD, PLAINTIFF IN ERROR,

vs.

LESSEE OF HENRY REYNOLDS AND AL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR KENTUCKY.

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J. & G. S. GIDEON, printers.

UNITED STATES OF AMERICA,
Eighth circuit, district of Kentucky, sct:

Pleas before the honorable John Catron and Thomas B. Monroe, judges of the circuit court of the United States in and for the eighth circuit and district of Kentucky, holden at the capitol in the town of Frankfort, at November term of said court, A. D. eighteen hundred and forty-two.

Be it remembered, that heretofore, to wit, at the May term of the court aforesaid, in the year of our Lord eighteen hundred and seventeen, came John Doe on the demise of Henry Reynolds, Edwin Cutbush, James Reynolds, James Reese and George Reynolds, and others, heirs and representatives of James Reynolds deceased, by his attorney R. Wickliffe, esq., and filed the following declaration in ejectment, to wit:

UNITED STATES OF AMERICA,
Seventh circuit, Kentucky district, to wit:

John Doe, a citizen of the State of New York, complains of Richard Roe, a citizen of Kentucky, in custody, &c., of a plea of trespass and ejectment, for this, that Henry Reynolds, Edward Cutbush, James Reynolds, James Reese and George Reynolds, citizens of the State of New York, on the first day of January, in the year 1815, in the State of Kentucky, and county of Clay, had granted, demised, and to farm let to the said John Doe one messuage and farm, and containing 61,958 acres of land, with the appurtenances, lying and being in the county and State aforesaid; to have and to hold his tenement aforesaid, with the appurtenances, unto the said John Doe and his assigns, from the 1st day of January aforesaid, until the full end and term of fifty years, thence next following, and fully to be complete and ended; by virtue of which demise, the said John Doe into the tenement aforesaid, with the appurtenances, entered and was thereof possessed, until the said Richard Roe afterwards, to wit, the second day of January, in the year aforesaid, with force and arms, into the tenement aforesaid, with the appurtenances, in and upon the possession of him the said John Doe entered, and the said John Doe from his tenement aforesaid, (his term aforesaid not being then nor yet ended) ejected, expelled, and removed, and him from his possession aforesaid held out and still doth hold out, and other enormities then and there offered him, against the peace and dignity of the United States, and to the damage of the said plaintiff $500, and therefore he brings suit, &c.

Also for this, that James Reynolds and James Reese, citizens of the State of New York, on the day of January, in the year 1815, in the State of Kentucky and county of Clay, had granted, demised, and to farm let, to the said John Doe one messuage and farm, and containing 61,958 acres of land, with the appurtenances, lying and being in the county and State aforesaid; to have and to hold his tenements aforesaid, with the appurtenances, unto the said John Doe and his assigns, from the

1st day of January aforesaid, until the full end and term of twenty years then next following, and fully to be complete and ended; by virtue of which demise, the said John Doe into the tenement aforesaid, with the appurtenances, entered, and was thereof possessed, until the said Richard Roe, afterwards, to wit, the 2d day of January, in the year aforesaid, with force and arms into the tenements aforesaid, with the appurtenances, in and upon the possession of him the said John Doe entered, and the said John Doe from his tenement aforesaid (his term aforesaid not being then nor yet ended,) ejected, expelled, and amoved, and him from his possession aforesaid held out, and still doth hold out, and other enormities then and there offered him, against the peace and dignity of the United States, and to the damage of the said plaintiff $500, and therefore he brings suit, &c.

Also, for this, that Henry Reynolds, James Reynolds, George Reynolds, Edward Cutbush and Cutbush his wife, late Reynolds, James Reese, and Reese his wife, late Reynolds, and Reynolds, heirs and representatives of James Reynolds deceased, citizens of New York aforesaid, on the 1st day of January, in the year 1815, in the State of Kentucky, and county of Clay, had granted, demised, and to farm let, to the said John Doe one messuage and farm, and containing 61,958 acres of land, with the appurtenances, lying and being in the county and State aforesaid; to have and to hold the tenement aforesaid, with the appurtenances, unto the said John Doe and his assigns, from the 1st day of January unto the full end and term of twenty years thence next following, and fully to be complete and ended; by virtue of which demise, the said John Doe into the tenement aforesaid, with the appurtenances, entered and was thereof possessed, until the said Richard Roe afterwards, to wit, [on] the 2d day of January, in the year aforesaid, with force and arms into the tenement aforesaid, with the appurtenances, in and upon the possession of him the said John Doe entered, and the said John Doe from his tenement aforesaid (his term aforesaid not being then nor yet ended) ejected, expelled, and amoved, and him from his possession aforesaid held out, and still doth hold out, and other enormities then and there offered him, against the peace and dignity of the United States, and to the damage of the said plaintiff $500, and therefore he brings suit, &c.

HUGHES & WICKLIFFE, *for pl'ffs.*

Messrs. James Garrard, jun'r, Daniel Garrard, and William Gerrard, James Gerrard, sen'r, citizens of Kentucky.

You may perceive by the foregoing declaration in ejectment, that I am sued for the premises therein mentioned, they being, or some part of them, in your possession, and to which I have no title; if therefore you claim any thereto, and intend to defend it, you must appear the 3d day of the next May term of the court, to be holden in and for the [?] circuit of United States, in the town of Frankfort, and then and there by a rule of said court make your defence, otherwise I shall suffer

judgment to pass against me by default, and you will be turned out of possession.

Yours, &c., RICHARD ROE,
A citizen of Kentucky.

December 13th, 1815.

CLAY COUNTY, *sct:*

This day Thomas S. Smith made oath before me, John H. Slaughter, a justice of the peace for said county, that on the 24th and 29th day of December, 1815, he executed the foregoing declaration in ejectment of James Garrard, sen'r, James Garrard, jun'r, and William Garrard, by acknowledgement, as per memorandum on the back; and also that he delivered to the wife of Daniel Garrard at his residence, he being absent, the tenants in possession, a copy of the above declaration and notice, and informed them of the purport thereof; and that unless they defend this suit, they would be turned out of possession.

Given under my hand, this 29th day of December, 1815.

JNO. H. SLAUGHTER, *J. P.*

The following is the acknowledgement mentioned in the foregoing certificate, viz:

" We hereby acknowledge the service of the within ejectment.

December 24th, 1815.

JAMES GARRARD,
JAMES GARRARD, Jr.,
WILLIAM GARRARD, Jr."

And afterwards, to wit, at the May term of the court aforesaid, in the year 1817, came the plaintiff aforesaid, by his attorney, and it appearing to the satisfaction of the court, from the affidavit of Thomas S. Smith, and the acknowledgement of James Garrard, James Garrard, jr., and William Garrard, that the tenants in possession have been regularly served with a copy of the plaintiffs' declaration and notice thereon written, and they failing to appear and plead to the plaintiffs' said action, though solemnly called, came not, but made default.

It is therefore considered by the court, that unless the said tenants do appear here on the first day of the next term of this court, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein supposed, and plead thereto, and agree to insist upon the title only at the trial, that judgment will be entered against Richard Roe, the casual ejector, and the writ of habere facias possessionem awarded the plaintiffs.

And it is further ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same as either party may direct, having due regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return one fair platt and certificate thereof into the clerk's office of this court, thirty days at least before day of trial,

and the marshal or one of his deputies are directed to attend the said surveyor and remove force, should any be offered.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1817, came the parties, by their attorneys, and this cause presenting in substance the same question as that stated in the bill of exceptions filed in the suit, Doe on the demise Clarke vs. Roe, (i. e.) Campbell, tenant in possession, in order to save trouble and expense, it is ordered by the court, with the assent of the parties aforesaid, that said bill of exceptions stand and be taken as a bill of exceptions in this cause, with this limitation or correction, that in this cause the date of the declaration, and the notice, service, &c., is to be taken from the declaration and not from the bill of exceptions, as to the date and service of the declaration in that cause.

The following is the bill of exceptions, filed in the suit of Doe on dem. Clarke vs. Roe, (i. e.) Cambell, viz:

CAMPBELL ads. CLARKE. } In ejectment.

Be it remembered, that the declaration and notice in ejectment in this cause bears date on the day of , and on which is endorsed the following evidence of service, to wit:

"Made known the contents of the within to Charles Campbell, and also delivered him a copy on the 18th day of December, 1815.

GRANVILLE LEWIS, *Deputy.*
ROBERT CROCKETT, *Marshal.*"

Travelling 51 miles.

Which decree and notice required the appearance of the tenants in this court; on the day of the May term, 1816, at that court, no order was made in this or any other cause, no court having been holden at that term, and the minutes of the adjournment of the court, at said term, are referred to, and made part of this bill of exceptions; at the November term, 1816, the following general order was made, to wit:

"The court not having held a session at the last term, and many ejectments being returnable to that term, and the defendants intending to object to the right of the plaintiffs to take a common order against them at this term; and there being at this time only one judge to this court, and he being desirous that the said question should be postponed until there be a full court, and the members of the bar being willing that this cause should be taken:

"It is therefore ordered as a rule of this court, that the said question be reserved until the next term of this court, and that in the mean time the usual orders be taken, and that the appearance of the defendants, or any order or step taken by them in court prior to the decision of said question, shall not prejudice their right, as to said question, but the same shall be decided as if the defendants had not appeared, but made the question on the earliest day on which it could have been made."

A common order was then taken in the cause at that term, as will ap-

pear by the record; at this term, May, 1817, counsel appeared on behalf of the defendants, the casual ejector, and as *amicus curiæ*, one of the tenants, and objected to any further order or proceedings founded on the said declaration and notice; but that the plaintiff ought to be [?] first to serve a new declaration and notice on the tenants. But the court overruled these objections, and decided that the proceedings were regular, and that the plaintiff had a right to proceed on said declaration and notice; to which decision the defendant, by his counsel aforesaid, excepts. Whereupon, the tenants acknowledging notice of the C. O. appeared and renewed said objections, and moved the court that they be hence dismissed, or the plaintiff compelled to serve on them a new declaration; but the court still being of opinion that said proceedings were regular, decided that, unless the tenants would make themselves defendants, and enter into the common rule, confess the lease, entry, and ouster, they would enter judgment against the casual ejector, and award to the plaintiff his writ of possession. To which opinions and decisions the tenants except, and tender their bill of exceptions to be signed, sealed, and enrolled; and reserving to themselves the benefit of these exceptions, and under the decisions aforesaid, entered themselves defendants.

THOMAS TODD, [L. S.]
ROBERT TRIMBLE. [L. S.]

And afterwards, to wit, on the same day of the term aforesaid, in the [year] 1817, came the tenants aforesaid, by their attorney, and on his motion, it is ordered, that the common order entered up herein be set aside, and that they be admitted defendants herein, instead of the casual ejector; whereupon, the said defendants entered into the common rule, to confess lease, entry, and ouster, and agreed to insist upon the title only at the trial, and severally say, they are in nowise guilty of the trespass and ejectment as the plaintiff against them has declared, and of this they put themselves upon the country, and the plaintiff likewise; therefore let a jury come, &c.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1818, came the plaintiff, by his attorney, and on his motion, it is ordered, that this suit be continued until the next term of this court, for and at the costs of the said plaintiff.

And afterwards, to wit, at the November term of the court aforesaid, in the year aforesaid, came the parties aforesaid, by their attorneys, and by their consent, it is ordered, that this cause be continued until the next term.

And upon the motion of the defendants, it is ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there amend the survey made herein, having due regard to all deeds and other evidences that may be produced; to report all matters of fact specially, and make out and return one fair platt and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend said surveyor, to remove force, should any be offered.

And afterwards, to wit, at the November term of the court aforesaid, A. D. 1819, came the parties, by their attorneys, and, on motion of the plaintiff, leave is given him to take the deposition of Septimus Davis and James Anderson, de bene esse, before any two justices of the peace, notary public, or mayor of any city; and, on motion of the defendants, leave is given them to take the depositions of Andrew Bradley, of Clay county, de bene esse, before any two justices of the peace, or notary public, or mayor of any city—each party giving the other legal notice of the time and place of taking said depositions.

And afterwards, to wit, at a subsequent day of the term aforesaid, in the same year, ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same, as either party may direct, having due regard to all deeds and other evidences that may be produced; to report all matters of fact specially, and return one fair platt and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial. And the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

And afterwards, to wit, at a subsequent day of the term aforesaid, came the plaintiff, by his attorney, and moved the court for leave to amend the declaration in this suit, upon the grounds filed herein; but the court not being sufficiently advised, took time, &c.

The grounds mentioned in the preceding order are not on file in the papers.

And afterwards, to wit, at the May term of the court aforesaid, A. D. 1820, came on to be heard the arguments of counsel on the plaintiff's motion to amend his declaration, but the court not being sufficiently advised, took time, &c.

And afterwards, to wit, at a subsequent day of the term aforesaid, the following order was entered herein, to wit:

The court being now sufficiently advised of and concerning the plaintiff's motion to amend his declaration herein, do consider that leave be given the plaintiffs to amend, by striking out the name of George Reynolds in first and 2d counts.

And afterwards, to wit, at a subsequent day of the term aforesaid, came the defendants, by their attorney, and moved the court for leave to file a plea to the jurisdiction; but the court not being sufficiently advised of and concerning the premises, took time, &c.

And at a subsequent day of the term aforesaid, the following entry was made in this cause, to wit:

The court being now sufficiently advised of and concerning the motion of the defendants for leave to file a plea in abatement herein, are of opinion, and do consider, that the same be overruled, with costs.

It is therefore considered by the court, that the plaintiff recover against the said defendants his costs expended in the defence of this motion.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1836, (until which time this cause has been regularly continued,)

came the defendants, by their attorney, and on motion, a rule is granted upon the lessors of the plaintiff, returnable here on the 3d day of the next term, to shew cause why this suit shall not be dismissed, unless the said lessors shall answer a bill of discovery filed by said defendants against them.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1839, the defendants move the court for a rule on the counsel for the plaintiff, to shew cause by what authority he commenced, and now prosecutes, this action.

Also for a rule on Robert Alexander, of Woodford county, to produce in court, at the calling of the cause at the next term, the deed from Reynolds to Savory, with the plat endorsed, referred to in the bill which was filed in this court by the defendants in this case, formerly made in this action of ejectment against the lessors of the plaintiff and said Alexander, and which are alleged to be in the possession of said Alexander, and which deed is alleged to have been made to Savary, of whom said Alexander is executor; and it is ordered, that a copy of this order be served on said Alexander.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1841, (until which time this cause was continued,) came the plaintiff's attorney, and on his motion, the rule on plaintiff's counsel to shew cause why he instituted and prosecutes this suit, entered up on the 12th day of November, 1839, be, and the same is hereby, rescinded.

Whereupon, the plaintiff's attorney suggested the death of the defendants William and James Garrard, which fact is not denied.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1841, came the attorney for the plaintiffs, and suggested to the court the death of Robert Alexander, which fact is not denied.

It is therefore ordered, that the rule entered up herein, on the 12th day of November, 1839, upon said Alexander, be, and the same is hereby, discharged.

And at a subsequent day of the term aforesaid, came the parties aforesaid, by their attorneys, and the exceptions heretofore filed to the depositions of James Anderson, Septemus Davis, William Rawle, and Thomas Cumpster, came on to be heard, but the court not being sufficiently advised, took time, &c.

And on the motion of plaintiff, leave is given him to retake the depositions of James Anderson and Septemus Davis, de bene esse, upon his giving to the defendants legal notice of the time and place of taking the same.

And on the further motion of the plaintiff, it is ordered, that the surveyor of county do go on the land in controversy, on the day of next, if fair, if not, then on the next fair day, and survey and lay off the same, as either party may direct, having due regard to all deeds and other evidence of title that may be produced; report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

And it is further ordered, that the said Daniel Garrard (the ter-tenant of the deceased defendants James Garrard, sen'r, and William and James Garrard, "whose deaths have been heretofore suggested") do appear here on the first day of the next term, and cause himself to be made defendant in the room and stead of Richard Roe, the casual ejector; receive a declaration in a plea of trespass and ejectment; confess the lease, entry and ouster in the declaration supposed, and plead thereto, or, on failure thereof, judgment will be entered against the casual ejector, and the writ of habere facias possessionem awarded the plantiff.

And on the further motion of said plaintiff, it is ordered, that this cause be continued at the costs of said plaintiff.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1842, came the plaintiff's attorney, and, upon notice filed, moved the court to extend the demise in the several counts in the declaration herein to fifty years from this date, which is hereby ordered accordingly.

And at a subsequent day of the term aforesaid, came the parties, by their attorneys, and the objections to the depositions of William Rowle and Thomas Cumpston, were again presented to the court, and the court being advised, do consider that the said exceptions be overruled.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1842, came the parties, by their attornies; wherefore, to try the issue joined, let a jury come; and thereupon came a jury, to wit: Edward C. Payne, Robert Boggs, John Brant, Orlando Brown, Elisha Warfield, Edward McCallister, William Rhodes, Jacob Hughes, Hugh J. Brent, Harvey Lamb, and Joseph Chresman, and Anthony Lockwood, who were elected, tried, and sworn, well and truly to try the issue joined as to the defendant Daniel Garrard, but there not being time to go through, all further proceedings herein are laid over until to-morrow morning 10 o'clock.

And at a subsequent day of the term aforesaid, in the same year, the following entry was made in said cause, to wit:

The jury sworn in this cause appeared, agreeably to adjournment, and the parties, by their attorneys, but there not being time to go through with trial, the jury is adjourned until to-morrow morning 10 o'clock.

And at a subsequent day of the term aforesaid, came again the parties, by their attorneys, and also the jury sworn in this cause, but there not being time to go through with the trial, the jury is adjourned until to-morrow morning 9 o'clock.

And at a subsequent day of the term aforesaid, to wit, the 25th of November, 1842, came again the parties, by their attorneys, and the jury that was sworn herein, but the jury not having made up a verdict, is again adjourned over until to-morrow morning 10 o'clock.

And at a subsequent day of the term aforesaid, to wit, the 26th day of November, 1842, came the parties aforesaid again by their attorneys, and the jury sworn in this cause appeared agreeably to adjournment, and returned into court the following verdict, to wit:

"We, of the jury, find the defendant guilty of the trespass and eject-

ment, in the declaration mentioned, as to the undivided four-fifth parts of the land in controversy, and assess the plaintiff's damage to one cent."

It is therefore considered by the court, that the plaintiff recover of the defendant Daniel Garrard, his term yet to come and unexpired, of, in, and to four undivided fifth parts of the land in the declaration mentioned, being sixty-one thousand nine hundred and fifty-eight acres of land, with the appurtenances thereunto belonging, lying and being in the county of Clay, and State of Kentucky, and also his costs herein expended.

And the writ of habere facias possessionem is awarded the plaintiff.

And afterwards, to wit, at a subsequent day of the term aforesaid, to wit, the first day of December, 1842, the following bill of exceptions was entered of record, to wit:

"Be it remembered that, on the trial of this cause, the plaintiffs read as evidence to the jury the certificate of survey marked A, (here insert it;) also the entry of Philip and James Moore, and John Donaldson, for 50,000 acres of land, to wit, (here insert it;) also the patent marked X, (here insert it;) also the certificate of survey marked C, (here insert it;) also xx the patent for 61,958 acres, to James Reynolds, marked D, (here insert it.) The plaintiff also read as evidence the following connected plat and report, made out by Felix G. Gilbert, marked E, (here insert it.) xx The plaintiff also introduced a witness, George Stivers, who proved that he was not with the surveyor Gilbert in making the survey reported by Gilbert, but he formerly run the line commencing at the point A B, on Gilbert's plat, and extending the same thence south 20 degrees east, 3,840 poles, horizontal measure; and that the distance so run by him did not extend as far, by about one quarter of a mile, as 3,840 poles, run by Gilbert aforesaid, extending from said point A B. That, in running said line, he crossed the water courses as reported by Gilbert on that line, he thinks, about as the streams are marked on the plat of Gilbert; all of which water courses run to his left whilst he was running the line, until he came to the waters of Red Burd, marked on Gilbert's plat. That he removed to the neighborhood or county where the land lies in 1809, and at that time, and ever since, the creek marked on Gilbert's plat "South fork," has been generally called and known by that name, though he since heard one man say it had been formerly called Goose creek. That the well marked on Gilbert's plat as Garrard's well, was, he thinks, used by Garrard for making salt, at the time the declaration in ejectment purports to have been served on him; and he thinks has ever since been used as such by said Garrard, or others under him. That Garrard lives at the place marked for his residence on said plat, and has a considerable farm in cultivation there. The plat and report of the surveyor, Lot Pitman, marked F, was also read as evidence, and the witness, Stivers, in answer to a question put by defendant's counsel, said, that according to his general knowledge of the land and objects designated on said plat, he thought those objects probably correctly designated on said plat.

Willis Blanton, a witness, was introduced by plaintiff, and proved that he was with the surveyor Gilbert when he made the survey reported by

Gilbert; that there were no lines or courses found for the 61,958 acre survey; that the survey was made by surface measure, and he believed the objects reported by Gilbert to be correctly reported.

The plaintiff also read in evidence the survey and report of Alexander Bradley, marked G, (here insert it;) he also read the depositions marked H, I, K, L, (here insert them.) The defendant offered to read to the jury the following record marked Z, (here insert it,) for the purpose of proving the trial, verdict, and judgment, contained in that record, with the intention to aid thereby in establishing the better title in the defendant; but the admission of the record was objected to by the plaintiff, and the objection was sustained by the court, and the record not permitted to be used for any such purpose; to which opinion and decision of the court the defendant excepted at the time, and prays this his bill of exceptions to be signed and recorded.

The defendant then offered said record in evidence to the jury, to prove that the plaintiffs in that case had offered, and used as evidence on the trial in that case, the deed in that record contained, from Reynolds to Savary; and offered to read also in this case the copy of that deed contained in that record, with the view of proving that the land in contest had been conveyed by Reynolds to Savary, and that the lessors of the plaintiff, in this case, had no title. But the court refused to permit the record copy of the deed therein contained to be read for such purpose. To which opinion and decision the defendant, at the time, excepted, and prays this his bill of exceptions to be signed, sealed, and recorded, which is accordingly done.

The defendant read in evidence the entries marked M, (here insert them,) and proved by the plaintiff's witness, Stivers, that those entries lie above the mouth of Sexton's creek, as designated on Gilbert's plat aforesaid, and between the mouth of that creek and the junction of Red Burd and Goose creek; that the stream marked by Gilbert as the South fork, has, ever since he became acquainted with that part of the country, *had* been called the South fork up to the junction of the Red Burd and Goose creek, and above that junction the Goose creek fork has been called Goose creek.

The defendant also read in evidence the entry marked N, and patent marked O, under which he claims the land in contest; but there was no evidence that said entry or patent covered defendant's possessions, or any part of the 61,958 acres sued for, (here insert them.)

The foregoing was all the evidence introduced in the cause; whereupon the plaintiffs moved the court to instruct the jury, (here copy the instructions marked No. 1,) but the court refused to instruct the jury as asked by the plaintiff, but in lieu thereof instructed the jury as follows, (here insert the instructions marked 2.)

To which opinion and decision of the court, in giving the instructions aforesaid, the defendant, at the time, excepted, and prays this his bill of exceptions to be signed, sealed, and recorded.

The defendant at the same time moved the court to give to the jury the following instructions, (here copy the instructions as moved in paper

3.) The court gave the first of the instructions as moved by the defendant, but at the same time instructed the jury that the depositions should be favourably construed; and upon being asked by the jury what was meant by the instruction, that the depositions should be favourably construed, the court informed them—(here insert the statement made by the judge on paper marked 4.)

The court refused the second instruction moved by the defendant, and instructed them instead thereof as follows, (here insert the instructions as given by the judge in said paper marked 4)

The court also refused to give the third instruction moved by the defendant, and referred the jury to the instruction given on the motion of the plaintiff, as the true mode of finding the beginning corner of the grant for the 61,958 acres. To each and every opinion and decision of the court, on the motion of the defendant for instructions as aforesaid, the defendant, at the time, excepted, and now excepts; he excepts to the opinion and decision in refusing the first instruction as moved, and in the instruction given by the court modifying that instruction, and particularly in the directions and instructions given to the jury as to the interpretation or construction which should be given to the depositions; he excepts to the opinion and decision given on his motion for the second instruction, in not giving that instruction as asked, and in giving it with the modification as given. He excepts to the decision and opinion on his motion for his third instruction, and in refusing to give that instruction as moved; and in referring the jury to the instructions given on the motion of the plaintiff, as the true mode of finding the beginning corner for the grant for the 61,958 acres. And the defendant prays this, his exceptions, to be signed, sealed, and recorded; which is accordingly done.

J. CATRON. [L. S.]

The following are the exhibits and instructions referred to, and made part of the foregoing bill of exceptions, to wit:

Certificate of survey marked (A.)

[For plat see original.]

LINCOLN COUNTY, *State of Virginia.*

Surveyed for Phillip & James Moore and John Donaldson, 50,000 acres of land, on 12 Treasury warrants, No. 16,237, 16,297, 16,239, 16,159, 20,001, 16,488, 16,238, 16,135, 16,240, 16,235, 15,800, 15,737, entered the 6th June, 1784; beginning one mile from the mouth of Sexton's creek, the waters of Kentucky river, in the county aforesaid, at A; at which beginning there *is* three poplars and two sugar trees; and running thence S. 20 E., 3,840 poles, to B., crossing the creek at 20 poles, and one at 900 poles, to a white oak and two beeches; thence S. 70 W.,

2,083 poles, to three white oaks at C; thence N. 20° W., 3,840 poles, crossing two creeks, one at 800 poles, and one at 3,040 poles, to two poplars and a white oak at D; and thence N. 70 E., 2,083 poles to the beginning.

Surveyed this 18th day of June, 1784.

DANIEL BOONE, *Dy. sur.*
JAMES THOMPSON, *S. L. C.*

WM. BROOKE,
SEPTEMUS DAVIS, } *C. M.*
EDMUND CALLOWAY, *Marker.*

Plotted per scale of 600 poles in an inch. Variation of the needle 2½ degrees east.

The above ass'd to Benjamin Wynkoop.

A copy, attest: JAMES ROBERTSON, *R. L. O.*
By RICH'D LONG, *D. R.*

Entry of Philip & James Moore, to wit:

JUNE *5th*, 1784.

Philip & James Moore and John Donaldson, enters 50,000 acres of land, upon twelve Treasury warrants, viz: Phillip & James Moore 20,000 acres, as ass'ee of Alexander Dick, and No. 20,001, 16,159, 16,239, 16,197, 16,237, and 10,000 acres, as ass'ee of Josiah Adams, and No. 16,488, John Donaldson 16,000 acres, as ass'ee of Alexander Dick, and No. 16,238, 16,135, 16,240, 16,235, and as ass'ee of William McWilliams 4,000 acres, and No. 15,800 and 15,737, beginning one mile from the mouth of Saxton's creek, which empties into Goose creek at a large rock 9 or 10 feet high which stands in Goose creek, and running thence S. 20° E., 3,840 poles; thence, at right angles from each end of this line, southwestwardly, until a line parallel with the first line shall include the quantity of the aforesaid 50,000 acres in one or more surveys.

June 5, 1784.—John Marie and James Reynolds, Moses Bartram, Doct. Benjamin Say, and William Forbes enters 61,958 acres of land on twenty-five treasury warrants, viz: John Marie, 7,000 acres, as assignee of Israel Gilpin; and No. 18,760, 18,758, 18,757, 18,759, and 3,958 acres, as assignee of William Lorman; No. 18,764, 18,762, and 4,000 acres, as assignee of Robert Coleman; and No. 19,509, James Reynolds, 10,000 acres, as assignee of John Young; and No. 16,346, Moses Bartram, 7,000 acres, as assignee of John Young; and No. 19,492 and 17,712, as assignee of Kuhn & Resberg, 2,000 acres; and No. 17,414, 17,374, Doct. Benj. Say, 4,000 acres, as assignee of David Rynehart; and No. 18,028, 18,030, 2,000 acres, as assignee of Kuhn & Resburg; and No. 17,417, 17,415, assignee of Frederick Stover, 4,000 acres; No. 18,023, 18,024, assignee of Benjamin Murry, 4,000 acres; No. 18,039, 18,040, as assignee of Ann Bartran, assignee of John Young, as assignee of Alexander Dick, 1,000 acres; No. 16,097, as assignee of Kuhn & Risburg, 1,000 acres; No. 17,418, as assignee of Alexander Dick, 1,000 acres; No. 19,927, as assignee of James Ransal, as assignee

of James *Rule*, as assignee of Kuhn & Risberg, as assignee of George Stubblefield, 1,000 acres; No. 17,371, William Forbes, 10,000 acres, assignee of Josiah Adams; No. 16,486, adjoining Phillip and James Moore and John Donaldson's entry, on Sexton's creek, which empties into Goose creek, beginning at the end of their 3,840 pole line, and continuing said line S. 20° east, so far that when a line drawn from the extremity of said line S. 70° west, so far as that when a line drawn from the extremity of the said S. 70° west line shall extend N. 20° west, so far that a line at right angles therefrom shall strike the fourth corner, and be parallel with said James Moore and John Donaldson's 4th line of their entry, on said Creek, and then round with their lines to the beginning, so as to include the aforesaid quantity, and exclude all uncultivatable lands, to be laid off in one or more surveys.

A copy—Attest: JAMES ROBERTSON, *R. L. O.*
By E. A. McCURDY, *D. R.*

Patent marked (X) 50,000 acres.

Patrick Henry, esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of twelve land office treasury warrants, Nos. 16,237, 16,195, 16,239, 16,159, 20,001, 16,488, 16,238, 16,135, 16,240, 16,235, 15,800, and 15,737, there is granted by the said Commonwealth unto Benjamin Wynkoop, assignee of James Reynolds, assignee of Philip Moore, James Moore, and John Donaldson, a certain tract or parcel of land, containing 50,000 acres by survey, bearing date the 18th day of June, 1784, lying and being in the county of Lincoln, and bounded as followeth, to wit: beginning one mile from Sexton's creek, the waters of Kentucky river, in the county aforesaid, at A; at which beginning there are three poplars and two sugar trees, and running 20° east, 3,840 poles, to B; crossing the creek at 20 poles, and one at 900 poles, to a white oak and two beeches; thence S. 70° west, 2,083 poles to three white oaks, thence N. 20° west, 3,840 poles, crossing two creeks, one at 800 poles and one at 3,040, to two poplars and one white oak; thence N. 70° east, 2,083 poles, to the beginning, with its appertenances; to have and to hold the said tract or parcel of land, with its appertenances, to the said Benjamin Wynkoop and his heirs forever.

In witness whereof the said Patrick Henry, esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 18th day of May, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY.

A copy—Attest: JAMES ROBERTSON, *R. L. O.*
By E. A. McCURDY, *D. R.*

[For plat see original.]

Lincoln county, State of Virginia:

Surveyed for Messrs. John Marie, James Reynolds, Moses Bartram, Dr. Benj. Say, and William Forbes, of Philadelphia, 61,958 acres of land, lying and being in the county aforesaid, in the State of Virginia, on the waters of Saxton's creek, a branch of Goose creek, which said Goose creek empties into Kentucky river, and adjoining an entry made by Phillip and James Moore's and John Donaldson, by virtue of an entry made the 5th day of June, 1784, on 25 treasury warrants, Nos. as follows, viz: 18,758, 18,757, 18,759, 18,760, 18,762, 18,764, 19,509, 16,346, 17,374, 17,414, 17,732, 19,492, 17,418, 17,371, 16,097, 19,927, 18.040, 18,039, 18,030, 18,028, 18,024, 18,023, 17,417, 17,415, and 16,486, beginning at the end of the first line of Moore's and Donaldson's land, being their S. 20° east line, represented on the plat by the letter A, at a white oak and two beeches, and running thence south 20° east, 918½ poles, to B, a black walnut; thence S. 70° west, 3,783 poles, bounded by lands unfit for cultivation, to C, a sugar tree; thence N. 20° W., 4,758½ poles, to D, a cherry and honey-locust; thence N. 70° east, one thousand seven hundred poles, to E, a white oak; thence S. 20° east, 3,840 poles, to F, a black oak; and thence N. 70° east, 2,083, poles, to the beginning.

Surveyed this 25th day of June, 1784, per

RICHARD ELLIS, *D. S.*
JAMES THOMPSON, *S. L. C.*

Plotted by a scale of 600 poles to an inch. Var. of the needle 2½ east. Assigned to James Reynolds.

A copy—Attest: JAMES ROBERTSON, *R. L. O.*
By E. A. McCURDY, *D. R.*

Patent marked (D,) to wit:

Patrick Henry, esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of twenty-five land office treasury warrants, Nos. as followeth, to wit: No. 18,758, 18,757, 18,759, 18,760, 18,762, 18,764, 19,509, 16,346, 17,374, 17,414, 17,711, 19,492, 17,418, 17,371, 16,097, 19,927, 18,040, 18,039, 18,030, 18,028, 18,023, 17,417, 17,415, and 16,486, and 18,024, there is granted by the said Commonwealth unto James Reynolds, assignee of John Marie, Moses Bartram, Benjamin Say, and William Forbes, a certain tract or parcel of land, containing sixty-one thousand nine hundred and fifty-eight acres by survey, bearing date the 25th day of June, 1784, lying and being in the county of Lincoln, and bounded as followeth, to wit: Beginning at the end of the first line of Moore's and Donaldson's land, being their line which runs S. 20° east, represented on the plat by the letter A, at a white oak and two beeches, and running thence S. 20° east, 918½ poles, to a black walnut; thence S. 70° west, 3,783 poles, bounded by lands unfit for cultivation, at a sugar tree; thence N. 20° west, 4,758½ poles, to a cherry tree and honey-locust; thence N. 70 east, 1,700 poles, to a white

oak; thence S. 20° east, 3,840 poles, to a black oak; and thence No. 70° east, 2,083, poles, to the beginning, with its appertenances; to have and to hold the said tract or parcel of land, with its appertenances, to the said James Reynolds and his heirs forever.

In witness whereof, the said Patrick Henry, esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 18th day of May, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY.

A copy. Attest:

JAMES ROBERTSON, *R. L. O.*
By E. A. McCURDY, *D. R.*

[See plats marked E and G, next page.]

Plat of F. J. Gilbert, marked E.

REYNOLDS, plaintiff, against DANIEL GARRARD, &c., defendants. } In ejectment.

In obedience to an order from the United States district court of Kentucky to me directed, I attended on the land in controversy on the 20th day of April, 1842, agreeable to a notice produced to me from the plaintiffs to the defendants present. John H. Slaughter, as agent, and Franklin Ballinger, as counsel for the plaintiffs, appeared, and directed me, before the commencement of the survey, to go to the mouth of Sexton's creek, and run a line to the beginning, corner of Benj'n Wynkoop's 50,000 acre survey, which corner was shewn to me some years ago as Wynkoop's place of beginning. After swearing the chain men, I began at the mouth of Sexton's creek, represented on the platt as letter A, on the north side of the same, above which stands a large rock, about fourteen poles in the edge of South fork of the Kentucky river; thence N. 71 W., 108 poles, crossing Sexton's creek at the above named distance, same course continued, recrossing the same at 182 poles, in all 190 poles; thence S. 108 po.; thence S. 30 po. E, crossing said creek again at 26 po., in all 30 po.; thence S. 13 W., 140 po., crossing said creek again N. 70° W., 14 po. to a rock, placed where is to be the place of Wynkoop's beginning corner, which is at this line in a cleared field, and no standing timber, except a beech. I was then directed to run the first line of the said survey S. 20 E., at the of 18 po. I found a beech, which has the appearance of being one block, which was in the sight, one of the beech on my left had been plainly blocked; S. 20° E. continued, crossing Sexton's creek at this time at 36 poles, which creek appears to have made changes from 22 to 36 poles afs., in all 250 poles, to the bank of South fork, crossing same at 265 poles, 290 poles to the bank, again re-crossing at 334 poles, and to road run 390 poles, crossing the same in all 1,072 po.; crossing Lower Tedious at 1,072, and 1,414 po.; crossing Upper Tedious branch continued 1,488 po. to crossing the

South fork below the present ford 1,510 po.; the same again 1,765 po. recrossing at 1,584 to Goose creek—2,138 po. to Goose creek, crossing at 2,151 po. to the bank of Red Bird 2,389 po., crossing at 2,397 po., to the bank again 2,525 po., crossing at 2,540 po., 2,800 po. to the road leading from Red Bird, Doct'r Bates, 2,935 po. to Bean creek, crossing at 2,939 po., continued the distance of 3,840 po. on the side of a ridge, the distance called by Wynkoop's survey, at which place was white oaks and beeches, but no corner; found surface measure; continued the line 5 per cent., crossing Hector's creek at 3,916 poles, 4,032 po., finding no corner; same course continued 963 po., crossing Elk creek at 892 poles; no corner being found, I was then directed to run off at right angles, and the course allowing 2 degrees as the variation, S. W. poe. near the head of a hollow, and run S. 68° W. 239 poles, crossing Elk creek again; continued 1,430 poles, crossing Bell's fork of Lockhart's creek, waters of Goose creek, 2,002 poles; passing James and Dougherty White's coal furnace, 8 poles included in the survey, 2,020 poles to Goose creek; crossing said creek at 2,024 to a branch 2,242 po., 2,420 po.; crossing Chop Bottom branch 2,778 poles to the bank of Collin's fork of Goose creek. I was then directed to run down said fork, and lay down the defendant's old salt well and dwelling, which runs N. 2 W., 56 poles to Collin's fork, crossing said fork at 69 poles, passing Chastain's new coal furnace, included 56 poles, 83 poles, A. White's old house, 113 poles, to the salt works' road leading to Knox and Tennessee, N. 10° E., 24 po., N. 30° E., 12 po., N. 42 E., 41, N. 2 W., 80 po., N. 43° W., 30, N. 5° E. 78 po., N. 52° W., 38 po., N. 18° W., 79 po., N. 46 po., D. Bate's salt furnace, N. 56 E., 76 po., N. 61 poles James H. Garrard's furnace and dwelling house, N. 40 E., 60 po., to Col. Garrard's old salt well, N. 35 E., 75 poles to said Garrard's dwelling house included, 725 poles. Was then directed by the defendants to commence at his old salt well, and run S. 20 E, till it struck his upper line, which distance was 155 po.

[For plat see original.]

Notes of reference.

The letter A, refers to the mouth of Sexton's creek; AB, the beginning corner of Wynkoop's 50,000 acre survey.

The dotted lines represent the patent calls from AB to the figure (1,) the place of Reynold's beginning, (2) the first line 918⅓ po., S. 70° W., 3,783 po., to the figure (3, 1, 4, 5, 6,) from thence to 1, represents the patent calls with dotted lines.

From the letter A, G, B, C, D, E, F, from thence to G, with black lines, represent the survey laid down at 2 degrees.

The courses and distances laid down on the lines.

No. 9. The place of striking Collin's fork G. creek, from thence to 10, James H. Garrard's furnace and dwelling; No. 11, old salt well; No. 12, Col. Garrard's dwelling; from No. 11 to No. 13, to Col. Garrard's line, that includes his improvements above.

No. 8. Chastain's coal furnace.

No. 4. Goose creek, James White's coal furnace and salt shed.

FELIN J. GILBERT, *S. C. C.*
LEVI B. HUNT,
THOMAS LUNCEFORD,
Sworn chainmen.

Plat of Alex'r Bradley.—(G.)

DOE, on dem. Henry Reynolds and others, pltffs.,
against
JOHN DOE, i. e. James Garrard, sen'r, James Garrard, jun'r, Daniel Garrard, and William Garrard, tenants in possession, defts.

In pursuance of an order of survey from the United States circuit court, 7th circuit, district of Kentucky, made at their May term, 1817, I attended at Clay court house on the 28th day of September, 1818; at which time and place, I was met by Mr. James Anderson, agent for the plaintiffs, but no one appeared for the defendants; and by direction of Mr. Anderson, I proceeded to make out the following report from notes taken from actual survey made by myself on the same ground, under an order of court, on the 21st, 23d, 24th, 25th, and 26th days of September, 1811, and from notes taken as above mentioned on the 3d, 4th, 5th, and 6th days of October, 1816. At this last mentioned time, a place was shewn me by Septemus Davis as the place of beginning of Benjamin Wynkoop's 50,000 acre survey, designated in the plat by the figure 2, who, at the same time, said he was one of the original chain carriers. At which place, shewn by Septemus Davis as aforesaid, there was a standing poplar tree, plainly marked as a corner tree, and to suit the calls of an attested copy from the surveyor's office of Lincoln county of said 50,000 acres; there is also two other poplars near the standing poplar, one of them has been cut down, on which I found some marks like those on a corner tree; the other poplar was too much decayed to ascertain any marks on it; and there was also near the standing poplar, the remains of two sugar trees, lying on the ground, one of them appeared to have been marked like a corner tree, the other, nearly decayed, retaining no marks of a corner tree perceivable; close by the standing poplar, there stands a white oak, marked with the letters RE in the bark. There was also a well marked line from said place and trees, suiting a course of S. 22° E, for the distance of 25 poles; Also, there was a well marked line from the same place, agreeing with the course of S. 68° W., for the distance of 22 poles. I cut a block

out of a tree on each of these lines, and by counting the growths, it agreed *the* with the date of the copy of survey aforesaid. The marks on the standing poplar at the corner shown by S. Davis as aforesaid, and the marks on the line trees appeared to have been made with the same tool as to their size and age.

AND'W BRADLEY, *Sur. C. C.*

[For plat see original.]

Explanatory notes.

1. A big rock in the south edge of the south fork of Kentucky river, 12 poles above the mouth of Sexton's creek.
2. The beginning corner of Benjamin Wynkoop's 50,000 acre survey, as shewn to me by Septemus Davis.
2, 3, 4, 5. Benjamin Wynkoop's 50,000 acres.
5, 6, 7, 8, 34. James Reynold's 61,958 acres.
7, 9, 10, 11. Lot No. 49, according to the plan of division on the back of the original deed, containing 5,000 acres, claimed by James Reynold's heirs.
*12. Daniel Garrard's dwelling house.
*13. Where John Barger now lives, and claimed by the def'ts.
*14. Where Thos. Elliott now lives, also claimed by the defendants.
From 2 to 3, thence to 4, I had the lines measured horizontally.
All the objects claimed by the defendants were laid down by actual survey at the time mentioned in the reports.

Depositions marked H, I, K, L, to wit:

The deposition of William Rawle, esq., taken in the court room of the circuit court of the United States, for the district of Pennsylvania, in the city of Philadelphia, on the 4th day of May, in the year of our Lord eighteen hundred and eighteen, to be read in evidence in the action of ejectment depending in the circuit court of the United States, for the district of Kentucky, wherein Henry Reynolds and others are lessors of the plaintiff, and James Garrard and others are defendants, who, being a person conscientiously scrupulous of taking an oath, and being duly affirmed according to the laws of Pennsylvania, and charged to speak the whole truth, deposeth and saith, that he was well acquainted with James Reynolds, late of the city of Philadelphia, carver and gilder, who lived many years in a house belonging to the wife of this affiant, as a tenant, in the city of Philadelphia; that to the best of this affiant's recollection and belief, the said James Reynolds left five children at the time of his death, which was upwards of twenty years ago.

The names of the children, living at the time of his death, were James, Henry, or Haney, (he was commonly called Harvey,) Anne, (or Nancy,) and Elizabeth, one of whom married Edward Cutbush, and the other James Reese, and Sarah, who, as far as affiant's knowledge extends, was not married; and this deponent believes the said James Henry, Anne, Elizabeth, and Sarah, were the heirs at law of the said James Reynolds, deceased.

W. RAWLE.

Affirmed, 4th May, 1818, before RICHARD PETERS.

STATE OF PENNSYLVANIA:

I, Richard Peters, district judge of the United States, in and for the district of Pennsylvania, not being counsel or attorney for either of the parties, or interested in the event of the cause, do certify that the said William Rawle, the deponent, at the time and place stated in the caption, was carefully examined, and cautioned, and (the said deponent being a person conscientiously scrupulous of taking an oath,) duly affirmed, according to the laws of Pennsylvania, to testify the whole truth, and subscribe the deposition and testimony by him given as aforesaid, (after the same was reduced by the deponent himself,) in my *presents*; and I do further certify that the whole of the deposition aforesaid was written by the deponent himself in my presence, and that the signature aforesaid was subscribed in my presence as aforesaid by the said deponent; and I do certify that none of the defendants attended at the taking the deposition, nor were they notified by me to attend, because they do not reside within one hundred miles of the place of taking the deposition, nor have they, or either of them, any agent or attorney residing within that distance of the place of taking the same; and I do further certify that the above deposition was taken as aforesaid, because the said William Rawle, the deponent, does not reside within one hundred miles of the place of trial of the said cause.

Given under my hand at Philadelphia aforesaid on the day and year aforesaid.

RICHARD PETERS.

Deposition I.

The deposition of Thomas Cumpston, taken at the house of Thomas Armstrong, esq., in South Fourth street, Philadelphia, on the second day of May, 1818, to be read in evidence in the action of ejectment depending in the circuit court of the United States for the district of Kentucky, wherein Henry Reynolds and others are lessors of the plaintiff, and James Garrard and others are defendants, who, being duly charged and sworn to speak the whole truth, deposeth and saith, that he was acquainted with James Reynolds, late of the city of Philadelphia; that he died about twenty-eight years ago; that he left two sons, to wit, James Reynolds and Henry Reynolds, and three daughters, to wit, Anne Reynolds, now married to Dr. Edward Cutbush, Elizabeth, now married to James

Reese, and Sarah Reynolds, whom this deponent believes to be his heirs at law. And further this deponent saith not.

THO. CUMSTON.

Sworn and subscribed before me, May 2d, 1818.

THOMAS ARMSTRONG.

STATE OF PENNSYLVANIA:

I, Thomas Armstrong, esq., one of the associate judges of the court of common pleas for the county of Philadelphia, not being counsel or attorney for either of the parties, or interested in the event of the cause, do certify that the said Thomas Cumpston, the deponent, at the time and place stated in the caption, was carefully examined, and cautioned, and sworn to testify the whole truth, and subscribed the deposition and testimony by him given as aforesaid, (after the same was reduced to writing by the said deponent in my presence,) *in my presence.* And I do further certify, that the whole of the deposition aforesaid was written by the deponent in my presence; and that the signature aforesaid was subscribed in my presence, as aforesaid, by the said deponent; and I do certify that none of the defendants attended at the taking the deposition, nor were they notified by me to attend, because they do not reside within one hundred miles of the place of taking the deposition; nor have they, or either of them, any agent or attorney residing within that distance of the place of taking the same.

Given under my hand at Philadelphia aforesaid on the day and year aforesaid.

THOS. ARMSTRONG.

May 2d, 1818.

PHILADELPHIA COUNTY, *sct:*

I, Joseph B. Norbury, prothonotary of the court of common pleas for the city and county of Philadelphia, do certify that Thomas Armstrong, esquire, before whom the within deposition was taken, and by whom the within certificate was made, whose name is thereto severally subscribed, was, at the time of taking the said deposition, and making the said certificate, and still is, one of the associate judges of the said court of common pleas, duly commissioned and qualified, to all whose acts, as such, full faith and credit is, and ought to be, given, as well in courts of justice as elsewhere.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court at Philadelphia, the second day of May, anno domini eighteen hundred and eighteen.

[L. S.]

JOS. B. NORBURY, *Proth'y.*

Deposition marked K.

The deposition of James Anderson, taken at the house of Mr. Samuel Allison, in the town of Richmond, Madison county, Ky., on the 11th December, 1820, to be read as evidence, de bene esse, in the seventh circuit court of the United States of America, in and for the district of Kentucky,

in the suit now depending in the said court, wherein Doe, on the demise of Reynolds' heirs, is plaintiff, and James Garrard, &c., are defendants. This deponent, being of lawful age, and first sworn, deposeth and saith:

Question by plaintiffs. State whether Septemus Davis did, or did not, show you the corner of Benjamin Wynkoop's 50,000 acre survey, patented to him, lying on Goose creek, on the South fork of Kentucky, on Saxton's or Laxton's creek; which corner stands about one mile from the mouth of said creek, which empties into said Goose creek, now called the South fork of Kentucky, near a remarkable rock?

Ans. He did shew me the beginning corner of that 50,000 acres on Sexton's creek; at the mouth of which creek there stood a large rock, in the South fork of Ky., 10 or 12 feet above the common water, and said rock is about 12 poles above the mouth of said creek, and on a straight line; it is about 266 poles to the beginning corner of Wynkoop's survey.

By same. At what time did he show the corner to you?

Ans'r. He showed it to me on the 3d October, 1816, in presence of Andrew Bradley, surveyor of Clay county, and others, and he showed [it] to me before and since that time.

By same. Did he, or did he not, tell you it was the same corner which him and Brooks had shown McIntire in 1805?

Ans'r. He told me it was the same corner which he had shewn to McIntire in 1805; I don't mind about Brooks.

By same. Did you and Bradley begin to execute the survey from said corner returned in this case?

Ans'r. The survey which has been returned in this case was made out from the works of a former survey; we did not think it necessary to run over the hills again; when we executed the former survey, we begun at the beginning-corner of Wynkoop's 50,000 acres, and run S. 70 W., the course called for in Wynkoop's patent, and run the course and distance of this line, which was two thousand and eighty-three poles, plumbed and levelled; in running the above course, we discovered marked line-trees, about 20 poles to where we crossed Sexton's creek; from said creek we discovered no marked trees; we also run part of the line S. 20° east, from the beginning-corner of said Wynkoop's survey, and found it plainly marked for 20 poles until it crossed the creek, and cut blocks out of the marked trees on both said lines, and found them to correspond with the date of said survey; after running from Wynkoop's beginning-corner two thousand and eighty-three poles, we turned and run S. 20° east, the whole length of Wynkoop's survey.

Question by same. What part of Wynkoop's survey of 50,000 acres does Reynold's survey of 61,000 and odd acres join?

Answer. It joins the line of Wynkoop's survey, running S. 20 east, from the north-west corner of Wynkoop's survey, it joins the whole length of that line, and part of the line running N. 70 east; and said survey includes Garrard's salt-works, it likewise includes his dwelling-house, farms, &c., adjoining the salt-works; and further this deponent saith not.

JAMES ANDERSON.

Kentucky, Madison county, sct.

We, Robert Caldwell and Daniel Breck, two of the Commonwealth's justices of the peace for the county aforesaid, hereby certify that the foregoing deposition was taken, subscribed, and sworn to, before us, at the house of said Allison, in Richmond, this 11th December, 1820.

R. CALDWELL,
DANIEL BRECK.

Two magistrates, each $1	$2 00
One witness,	1 25
	$3 25

Deposition marked (L.)

The deposition of Septimus Davis, of lawful age, taken this 24th day of October, 1820, at the tavern of John Dudley, in the town of Winchester, Clarke county, Kentucky, agreeable to the annexed dedimus.

The deponent being first duly sworn, according to law, deposeth and saith: that being called upon by James Dordes to go along with, and in company of, William Brooks and John McIntire, and on the 11th day of June, 1805, did point out and shew to said John McIntire, (a surveyor appointed,) the beginning corner of a tract of land, containing 50,000 acres, which Daniel Boone did survey on or about the 18th day of June, 1784, and at the making of which survey, this deponent, Septimus Davis, and William Brooks, did act and assist as chain-carriers, in so making said survey; deponent further says, that said beginning-corner was so *im*plicitly marked, and lines extended from said beginning, at right angles, and marked, that the aforementioned Daniel Boone, Septimus Davis, and William Brooks, did proceed to measure with chain the first line called for in said survey, which deponent well believes to be S. 20 degrees east, and did continue on said line to measure one whole day, and did encamp on said line one whole day, and did encamp on said line one night, and that, fearful of an attack from Indians, the said Daniel Boone, Septimus Davis, and William Brooks, did return to Boone's station.

That on the aforementioned 11th day of June, 1805, this deponent did particularly notice, that of the three poplars called for to begin said survey, one was standing and one was cut down, both retaining their marks, and the third decayed and fallen; the two sugar trees were decayed, and standing with their tops blown off; both of said sugar trees retaining their marks.

Deponent further says, that the said beginning-corner is on a creek, now called Saxton's creek, and thinks said creek was formerly called Laxton's creek, which empties into Goose creek, at a rock, standing in Goose creek, nine or ten feet high, about a mile from the aforementioned beginning.

Deponent further states, that he shewed said corner of said 50,000

acre survey to Mr. James Anderson, of Madison county, and Andrew Bradley, the county surveyor of Clay county, about four or five years ago, who, he understood, were about to execute a survey, under an order from some court, but does not know what court it was, in a suit, in which he understood, at that time, Reynold's heirs were a party, and that some of the Garrards were also a party.

That said Anderson and Bradley started from said corner to make the survey, under said order of court.

Question by plaintiff. Did you understand from said Bradley and Anderson that they, at that time, were about to lay down a claim of sixty odd thousand acres?

Answer by deponent. I did understand so from them.

Question. Do you know in whose name the said sixty odd thousand acres was surveyed and patented in?

Answer. I do not know.

Question by same. Did you understand at that time, that the said sixty odd thousand acres adjoined the said 50,000 acres?

Answer by deponent. Yes, I did, and always understood, ever since the said survey of 50,000 acres was made, that a survey of sixty odd thousand was to join the said 50,000 acres somewhere, but do not know in whose name the said sixty odd thousand acres was entered, surveyed, or patented.

Question by same. Is the creek which you call Goose creek in this deposition, now called the South fork of Kentucky, and is it the same which runs up to the salt-works, where Patrick, Crooks & White, or Langford, and now Bates and others, claim, near Clay court-house, and likewise the salt-works now claimed by the defendant William Garrard and others?

Answer by deponent. The said Goose creek and the South fork of Kentucky river is one and the same stream of water, and extends up to the salt-works respectively occupied by the persons named in the question.

Question by the same. Have you understood that the said 50,000 acres was patented to Benjamin Wynkoop, and is the same under which James Dardis and others claim?

Answer by same. I have understood so.

Question by one of the defendants, Wm. Garard, jr. Did you know the creek alluded to, and was it generally known by others, at the time spoken of in your deposition, when certain trees were marked and claimed as the corner of a survey of 50,000, in the name of James and Philip Moore and John Donaldson, by the name of Sexton's creek?

Answer. I did not know it as Saxton's or Sexton's creek at that time, and in the year 1805, application was made to me by a certain James Dardis, for information respecting a survey of 50,000 acres, which he stated lay on Saxton's or Sexton's creek, a branch of Goose creek, at which time this deponent had no knowledge or recollection of that name, as applied to the creek in question; but Dardis informed me that it was called Saxton's creek, upon which this deponent wrote the name

of the creek, as stated by Dardis, on the wall of his house, and sometime afterwards, a son of Col. Daniel Boone, the surveyor alluded to in the body of my deposition, came to my house, and informed me that his father did not call the creek Saxton's, or Sexton's creek, but Laxton's creek.

Question by same. Can you, at this distance of time, say, that the survey of 50,000 was made in the name of Philip and James Moore, and John Donaldson, or of any other person?

Answer. I did recollect, when applied to by Dardis, the names of the particular persons for whom the survey in question was made, but understood that it was made by Boone, at the instance of one Ellis, an agent for a company of men living in Maryland.

Question by same. Did you attend, with surveyor Andrew Bradley, at the place claimed as beginning-corner of the 50,000 acres, more than once?

Answer. I have not a clear recollection of more than once.

Question by same. In following the line south twenty degrees east, from the marked trees mentioned in your deposition, did you cross or encamp on any drain or water-course which run to the west, or in a direction to the right hand, whilst pursuing this particular line?

Answer. We encamped on the line at a drain, which it is my belief run to the right hand when persuing the direction of the line south *twenty degrees east.*

Question by same. Was William Brook, who assisted you in carrying the chain at the time you speak of in your deposition, your neighbor, and do you know or believe that he returned to the neighborhood of the creek, where the trees were marked, as spoken of by you, and which are claimed as the corner of a 50,000 acre survey, at any time within ten or fifteen days after you came home, as stated?

Answer. It is my conviction that Wm. Brooks never was at the corner in question from the time that Boone, Brooks, and myself were there, when the corner was made, until we went there, in 1805, to shew to John McIntire the corner aforesaid, and I am positive he could not have went there in ten or fifteen days after our return, without my knowing and recollecting the fact.

Question by plaintiff. When said Dardis applied to you for information about the said 50,000 acres survey, and enquired for Saxton's creek, did you not recollect at that time that said Daniel Boone called the creek, on which the said corner of the said 50,000 acres survey was made, by the name of Saxton's creek, or some name very much like it? And when said Dardis mentioned the names of Philip and James Moore, did you not recollect to have heard Daniel Boone, when he was making the 50,000 acre survey, mention their names as persons who were interested in the said 50,000 acre survey?

Answer. I do think that said Boone did call it Saxton's creek, or something like it; but not long after said Dardis made the said enquiry of me, I was informed by Col. Boone's son, Jesse, that his father called it Laxton's creek, and that when said Boone was making said survey

of 50,000 acres, I heard him read over said names of Phillip and James Moore, and John Donaldson, from papers which he had with him, and understood from him that they were interested in the said 50,000 acre survey, and that they were interested also in the surveys which said Boone was then about to make, in consequence of an application from one Richard Ellis, who, I understood, acted for a company of men in Maryland.

Question by same. Can you say, positively, that said Brooks did not return with said Daniel Boone to the neighborhood of said Saxton's creek, as you have called it in this deposition, at any time after you were there at the making of said corner, until the year 1805?

Answer. I think it is not impossible, but think it very improbable.

Question by same. Can you say that said Brooks did not assist in making the said sixty odd thousand acre survey, which adjoins the said 50,000 acre survey?

Answer. It is my belief that the said William Brooks, who was out with said Daniel Boone and myself, did not assist in making said sixty odd thousand acre survey—and further this deponent saith not.

SEPTIMUS DAVIS.

State of Kentucky, Clarke county, sct.

The foregoing deposition of Septimus Davis was taken, subscribed and sworn to, before us, George Webb and John Ward, two of the justices of the peace in and for said county, agreeable to the caption thereof, and the annexed dedimus.

Given under our hands and seals this 24th day of October, 1820.

GEO. WEBB, [L. S.]
JNO. WARD, J. P. [L. S.]

Magistrate's fee, $2 00
Witness attendance, 50 Paid by plaintiff.

Record marked (Z.)

State of Kentucky, Clay county, sct:

Pleas before the honorable the judge of the Clay circuit court, commencing on the 29th day of December, 1815, and ending on the seventeenth day of April, 1817.

JOHN DOE on the demise of ROBERT ALEXANDER, &c., pl'ff.
against
RICHARD ROE, i. e., JAMES GARRARD, sn'r, JAMES GARRARD, WM. GARRARD, and DANIEL GARRARD, def'ts.
} In ejectment.

State of Kentucky, to wit:

John Doe, a citizen of the State of Kentucky, complains of Richard Roe, a citizen of Kentucky, in custody, &c., of a plea of trespass and ejectment, for this, that Robert Alexander, on the 1st day of January, in the year 1815, in the State of Kentucky and county of Clay, had

granted, demised, and to farm let, to the said John Doe, one messuage and farm, and containing 61,958 acres of land, with the appertenances, lying and being in the county and State aforesaid; to have and to hold his tenement aforesaid, with the appertenances, unto the said John Doe and his assigns, from the 1st day of January aforesaid, unto the full end and term of fifty years thence next following, and fully to be completed and ended; by virtue of which demise, the said John Doe, into the tenement aforesaid, with the appertenances entered, and was thereof possessed until the said Richard Roe, afterwards, to wit, on the 2d day of January, in the year aforesaid, with force and arms, into the tenement aforesaid, with the appertenances, in and upon the possession of him the said John Doe entered, and the said John Doe, from his tenement aforesaid, his term afs'd, (not being then near yet ended,) ejected, expelled, amoved, and him from his possession aforesaid held out, and still doth hold out, and other enormities then and there offered him against the peace and dignity of the United States, and to the damage of the said plaintiff $500, and therefore he brings suit, &c.; and for this, that James Reese and Reynolds, on the 1st day of January, in the year 1815, in the State of Kentucky and county of Clay, had granted, demised, and to farm let, to the said John Doe, one messuage and farm, and containing 61,958 acres of land, with the appertenances, lying and being in the county and State aforesaid, to have and to hold his tenement aforesaid, with the appertenances, unto the said John Doe and his assigns, from the first day of January aforesaid, unto the full end and term of fifty years thence next following, and fully to be complete and ended; by virtue of which demise the said John Doe into the tenement aforesaid, with the appertenances, entered, and was thereof possessed, until the said Richard Roe, afterwards, to wit, the 2d day of January, in the year aforesaid, with force and arms, into the tenement aforesaid, with the appertenances, in and upon the possession of him the said John Doe entered, and the said John Doe from his tenement aforesaid (his term aforesaid not being then nor yet ended) ejected, expelled, and amoved, and him from his possession aforesaid held out, and still doth hold out, and other enormities then and there offered him against the peace and dignity of the United States, and to the damage of the said plaintiff $500; and therefore he brings suit, &c.

And also, for this, that Henry Reynolds, Edward Cutbush, James Reynolds, James Reese, and George Reynolds, on the 1st day of January, in the year 1815, in the State of Kentucky and county of Clay, had granted, demised, and to farm let, to the said John Doe, messuage and farm, and containing 61,958 acres of land, with the appertenances, lying and being in the county and State aforesaid, to have and to hold his tenement aforesaid, with the appertenances, unto the said John Doe and his assigns, from the 1st day of January af'sd, unto the full end and term of twenty years thence next following, and fully to be completed and ended; by virtue of which demise the said John Doe, into the tenement aforesaid, with the appertenances, entered, and was thereof possessed, until the said Richard Roe, afterwards, to wit, the 2d day of

January, in the year aforesaid, with force and arms, into the tenement aforesaid, with the appertenances, in and upon the possession of him the said John Doe entered, and the said John Doe, from his tenement aforesaid, (his term aforesaid not being then nor yet expired,) ejected, expelled, and amoved, and him from his possession aforesaid, held out, and still doth hold out, and other enormities then and there offered him against the peace and dignity of the United States, and to the damage of the said plaintiff $500; and therefore he brings suit, &c.

And for this, that Henry Reynolds, James Reynolds, George Reynolds, Edward Cutbush and Cutbush, his wife, late Reynolds, James Reese and Reese, his wife, late Reynolds, and Reynolds, heirs and representatives of James Reynolds, dec'd, on the first day of January, 1815, in the State of Kentucky and county of Clay, had granted, demised, and to farm let, to the said John Doe, one messuage and farm, and containing 61,958 acres of land, with the appertenances, lying and being in the county and State aforesaid, to have and to hold his tenement aforesaid, with appertenances, unto the said John *Roe* and his assigns, from the first day of January aforesaid, unto the full end and term of fifty years thence next following, and fully to be complete and ended; by virtue of which demise the said John Doe, into the tenement aforesaid, with the appertenances, entered, and was thereof possessed, until the said Richard Roe, afterwards, to wit, the 2d day of January, in the year aforesaid, with force and arms, into the tenement aforesaid, with the appertenances, in and upon the possession of him the said John Doe, entered, and the said John Doe, from his tenement aforesaid, (his term aforesaid not being then nor yet ended,) ejected, expelled, and amoved, and him from his possession aforesaid held out, and still doth hold out, and other enormities then and there offered him, against the peace and dignity of the United States, and to the damage of the said plaintiff $500; and therefore he brings suit, &c.

GEORGE WALKER, *for plaintiff.*

Messuers. James Garrard, sen'r, James Garrard, ju'r, William Garrard, and Daniel Garrard, citizens of Kentucky.

You may perceive, by the foregoing declaration in ejectment, that I am sued for the premises therein mentioned, they being, or some part of them, in your possession, and to which I have no title; if, therefore, you claim any thereto, and intend to defend it, you must appear the 3d day of the next term of the court to be holden in and for the circuit of Clay, at the court house in Clay county, and then and there, by a rule of said court, make your defence; otherwise I shall suffer judgment to pass against me by default, and you will be turned out of possession.

Yours, &c., RICHARD ROE,
A citizen of Kentucky.

CLAY COUNTY, *sct:*

This day Thomas S. Smith made oath before me, John H. Slaughter, a justice of the peace for said county, that, on the 24th and 29th days of

December, 1815, he executed the foregoing declaration in ejectment, on James Garrard, sen'r, James Garrard, ju'r, and Wm. Garrard, by acknowledgement as pr. memorandum on the back, and delivered to the wife of Daniel Garrard at his residence, he being absent, the tenant in possession, a copy of the above declaration and notice, and informed them of the purport thereof; that, unless they defend the suit, they would be turned out of possession.

Given under my hand, this 29th day of December, 1815.

JNO. H. SLAUGHTER, *J. P.*

We hereby acknowledge service of the within ejectment, Dec'r 24th, 1815.

JAMES GARRARD,
JAMES GARRARD, jr.
WILLIAM GARRARD.

NOTE.—Owing to the indisposition of the judge's family there was no court held at the term to which this declaration was made returnable, viz: April term, 1816, July term of the Clay circuit court, in the year 1816, and on the 2d day of the term.

James Garrard, sen'r, James Garrard, jr., William Garrard and Daniel Garrard, on their motion, are admitted defendants in the room of Richard Roe; and thereupon, by their attorney, come and defend the force and injury, when, &c.; plead the general issue; confess the lease, entry, and ouster in the declaration supposed, and agrees to insist on the title only at the trial; and the defendants filed their joint plea, in the words and figures, to wit: and the said defendants comes and defends the wrongs, &c., and sayeth that the said plaintiff, *their* action ought not to have and maintain, because they say they are not guilty of the trespass in the declaration supposed; of this they put themselves upon the country.

LETCHER & WALKER, *for defts.*

And the plaintiff likewise.

QUARLES, *for plaintiff.*

And thereupon, on motion of the plaintiffs, by their attorney, it is ordered, that the surveyor of this county do go on the land in controversy, on the day of next, if fair, if not, on the next fair day, and survey, and lay off the same, as either party would have it, paying due regard to all title papers that may be produced, and report all matters of fact specially, and return four fair plats and certificates thereof to the next court; and it is ordered, that the sheriff of this county attend, to remove force, *if* should any be offered.

And it is further ordered, that this suit be continued until the next term of this court.

At the October term, 1816, of the Clay circuit court, (viz:) the 3d day of the term, the defendants, by their attorney, represented to the court, that there was pending in said court, between said parties, two suits for the same cause of action, and moved the court to dismiss one of said suits. After hearing the arguments of counsel, &c., the court overruled

the motion; and the court then ruled the plaintiff to shew cause, at the next term, why one of said suits shall not be dismissed; and on the motion of the plaintiff's attorney, oath being made, it is ordered, that this suit be continued until the next term of this court; to which opinion the counsel for the defendants excepts.

Bill filed and withdrawn by defendant's attorney.

The plaintiffs, by their attorney, having filed their affidavit in the following words and figures, to wit:

CLAY COUNTY, *sct:*

Robert Alexander makes oath and says, that he has been considerably delayed in the measures he conceives necessary to bring the above suit to trial, with justice to himself, by the difficulty he has experienced in obtaining counsel; that in applying to those whose assistance he meant to request, he found they had already been retained by the defendants; that no court has intervened in the Clay circuit, as this deponent believes, since he was informed by his present and only attorney, Col. T. Quarles, that he was at liberty, and would take charge of the said suit for this deponent in said court. This deponent further says, that he he does not think he can, with safety to himself, proceed to a trial of said suit, without obtaining testimony to prove the heirship of the heirs of James Reynolds, deceased; that the want of counsel has prevented his making earlier application to the court for this purpose; that he believes he can obtain the necessary proof of the said heirship, by means of the testimony of Edward Cutbush, and others, of the city of Washington, in the District of Columbia, and of Levi Hollingsworth, and others, of the city of Philadelphia, in the State of Pennsylvania; and to affect this object, he prays that time be granted him by the said court; and that the necessary writs may issue, to take the testimony aforesaid.

ROBT. ALEXANDER.

FRANKLIN COUNTY, *sct:*

SEPTEMBER 26*th*, 1816.

Sworn to by Robert Alexander, before the undersigned, a justice of the peace, in and for the said county of Franklin.

O. G. WAGGONER, *J. P.*

And on the motion of the attorney for the plaintiff, a commission is awarded to take the deposition of Edward Cutbush, of the city of Washington, in the District of Columbia, and Levi Hollingsworth of the city of Philadelphia, before the mayor of the city, to be read as evidence in this cause, giving the defendants legal notice of the time and place of taking the same; and by consent of the parties, the surveyor of this county is ordered to go on the land in controversy, on the day of , if fair, if not, the next fair day, and amend the survey as either party shall require, having due regard to all title papers, [and] make out and return four fair plats thereof, reporting all matters of fact specially; and it is ordered, that the sheriff of this county attend, to remove force, should any be offered.

Notice filed to amend surveyor's report, viz:

Messrs. Robert Alexander, James Reese, and Reynolds, Henry Reynolds, Edward Cutbush, James Reynolds, James Reese, and George Reynolds:

Take notice, that we, or some one of us, will attend, with the surveyor of Clay county, on the 20th day of November, 1816, at the salt furnace of James Garrard and Sons, on the South fork of the Kentucky river, called and known by the name of Goose creek, in the county of Clay, and from thence we shall proceed to amend the survey in the ejectment you brought against us, now depending in the circuit court of Clay; and that we shall, with the surveyor, proceed from day to day, until the whole of the business is finished, when and where you may attend, if you please.

We are yours, &c.,
JAMES GARRARD, sen'r,
WILLIAM GARRARD,
JAMES GARRARD, jun'r,
DANIEL GARRARD.

CLAY COUNTY, *sct:*

DOE, on the demise of Robert Alexander, and of the heirs of James Reynolds, dec'd,
vs.
JAMES GARRARD, and others.

Robert Alexander, one of the plaintiffs in the suit above mentioned, makes oath, that he believes the testimony of Thomas Cumster, John Wilson, Richard H. Wilcox, William Rawle, and Samuel M. Fox, inhabitants of the city of Philadelphia, or some of them, are necessary to enable him to prove who are the heirs of James Reynolds, deceased; and that he believes, without such testimony, he cannot proceed to the trial of said suit with safety; he therefore wishes that writs may issue to authorise the caption of the depositions of the witnesses aforesaid in the said suit, and the said Alexander further says, that he knows of no person within this State, by whose testimony the heirships aforesaid can be established.

ROBT. ALEXANDER.

FRANKLIN COUNTY, *sct:*

This day, Robert Alexander, whose name is subscribed to the above affidavit, appeared before me, one of the Commonwealth's justices of the peace, for the said county, and made oath to its truth.

Given under my hand, this 3d day of January, 1817.

RICHARD TAYLOR, *J. P.*

CLAY COUNTY AND CIRCUIT, *sct.*

State of Kentucky:

The Commonwealth of Kentucky to the mayor of the city of Philadelphia, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining whatsoever witnesses, as well on behalf of

Doe, on the demise of Robert Alexander, and of the heirs of James Reynolds, deceased, plaintiff, as on behalf of James Garrard and others, defendants, command you, that at such certain day and place as you shall appoint, you assemble together Thomas Cumston, John Wilson, Richard H. Wilcox, William Rawle, and Samuel M. Fox, inhabitants of the city of Philadelphia, and them, so called and caused to come before you, you distinctly examine on the holy evangelists of Almighty God, touching the premises; and their examination into our Clay circuit court, holden for the county of Clay, plainly, without delay, you shall send certified, enclosed, and also this writ.

Witness Abries Baker, clerk of our said court, at his office, the 17th day of January, 1817, and 25th year of the Commonwealth.

A. BAKER, *Clerk.*

Take notice, that in a suit depending in the Clay circuit court, in which I and the heirs of James Reynolds, dec'd, are plaintiffs, and James Garrard, sen'r, James Garrard, jr., William Garrard, and Daniel Garrard, are defendants, I shall, on Monday, the 17th day of March next, at the mayor's office, in the city of Philadelphia, in the Commonwealth of Pennsylvania, proceed to take the deposition of Thomas Cumpston, John Wilcox, Richard H. Wilcox, William Rawle and Samuel M. Fox, and shall continue the same, from day to day, until the whole is completed, agreeable to the writ of dedimus potestatum for that purpose issued from the said circuit court.

Frankfort, the 11th February, 1817.

ROBERT ALEXANDER.

JAMES GARRARD, sen'r, esq.,
JAMES GARRARD, jr., esq.,
WILLIAM GARRARD, esq.,
DANIEL GARRARD, esq.

Return on notice.

Executed by delivering a copy of the within notice to James Garrard, sen'r, on the 15th day of February, 1817.

JOHN B. BAUL, *D. S.*
For JOSEPH L. STEPHENS, *S. B. C.*

Executed by delivering a copy of the within notice to James Garrard, jur., and William Garrard, the 14th day of February, 1817.

D. M. HICKMAN, *D. S.*
For JOSEPH L. STEPHENS, *S. B. C.*

Certificate endorsed on a copy of the above notice, addressed to Daniel Garrard, as filed, viz:

FRANKLIN COUNTY, *sct:*

This day Joseph Edington personally appeared before me, a justice of the peace of said county, and made oath that he did deliver a true copy of the within to Col. Daniel Garrard, of Clay county, and State of Kentucky, the 15th of February, 1817.

Given under my hand this 22d day of February, 1817.

J. BROWN, *J. P. F. C.*

This day, the 15th day of April, 1817, the pl'ff moved the court to amend the fourth count in their declaration; which motion was overruled, and the pl'ffs, by their attorney, excepts to the opinion of the court; whereupon, the pl'ffs filed their bill, which was signed, sealed, and ordered to be enrolled, viz:

"*Bill of exceptions.*"

DOE, on the demise of Rob't Alexander; Doe, on the demise of James Reese, and Reynolds; Doe, on the demise of Henry Reynolds, &c.; Doe, on the demise of Henry Reynolds, plaintiffs,
against
DANIEL GARRARD, James Garrard, sen'r, James Garrard, jr., and William Garrard, defendants.

The plaintiffs moved the court to amend the 4th count in the declaration, by inserting the names of Sarah Reynolds, one of the heirs; which motion was overruled by the court; to which opinion of the court the plaintiff excepts, and prays this, their bill of exceptions, may be signed, sealed, and enrolled. It was agreed, between the plaintiffs and defts., that the motion should have the same effect for the amendment, as if a seperate count had been offered, embraceing the amendment proposed.

THOMAS MONTGOMERY. [L. S.]

And now, at this day, "to wit," the 15th day of April, 1817, came the parties, by their attornies, and the issues having been made, a jury was ordered to come, and thereupon came a jury, viz: "Daniel Stuard, Isaac Jones, Dennis Burns, William Leviers, Sam'l Chesnut, Isaac McCollum, Jeremiah Smith, Drury Thompson, William Williams, Elisha Bardman, Elijah Bardman, and John Gilbert, elected, tried, and sworn well and truly to try the issue joined, upon their oath do say, "we of the jury find for the defendants."

It is, therefore, considered by the court, that the defendants recover of the plaintiffs their costs expended about their defence; and that the said pl'ffs take nothing by their bill, but, for their false clamour, go hence, without day, &c.

A bill of exceptions to the opinion of the court overruling the motion of the pl'ffs for a new trial, executed and filed; and it is agreed that the said bill shall be filed, and considered as a matter of record, so as to be copied into the transcript taken up to the court of appeals, and for all other purposes, without being actually entered on the order book; and it is also agreed that the papers referred to in said bill are to be copied into the same, at the notes of reference.

An appeal is granted the plaintiff from the judgment of this court; and, by the agreement of the defendants, the bond of Tunstall Quarles, jr., in the penalty of five hundred dollars, is to be taken in lieu of a regular appeal bond—the same condition to be annexed to it as to other appeal bonds.

Which bill is in the following words and figures, to wit:

JOHN DOE, on the demise of James Reynolds' heirs, and others,
vs.
JAMES GARRARD and others.
} In ejectment.

Be it remembered, that, on the trial of this cause, the pl'ff read as evidence to the jury the following patent to James Reynolds for 61,958 acres of land, viz:

Patent for 61,958 acres.

Patrick Henry, esq., governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue of, and in consideration of, twenty-five land office Treasury warrants, No. as followeth, to wit: "No. 18,758, 18,757, 18,759, 18,760, 18,762, 18,764, 19,509, 16,346, 17,374, 17,414, 17,111, 19,492, 17,418, 17,371, 16,097, 19,927, 18,040, 18,039, 18,030, 18,028, 18,023, 17,417, 17,415, 16,486, and 18,024, there is granted, by the said Commonwealth, unto James Reynolds, ass'ee of John Moris, Moses Bartram, Benjamin Say, and William Forbes, a certain tract or parcel of land, containing 61,958 acres, by survey bearing date the 25th day of June, 1784, lying and being in the county of Lincoln, and bounded as follows, to wit:" Beginning at the end of the first line of Moore's and Donaldson's land, being their line, which runs south twenty east, represented on the plat by letter A, at a white oak and two beeches, and running thence S. 20 E., 918½ poles, to a black walnut; thence S. 70° W., 3,783 poles, bounded by land unfit for cultivation, at a sugar tree; thence N. 20° W., 4,758½ poles, to a cherry tree and honey locust; thence N. 70° E., 1,700 poles, to a white oak; thence S. 20 E., 3,840 poles, to a black oak; thence N. 70 E., 2,083 poles, to the beginning, with its appurtenances: To have and to hold the said tract or parcel of land, with its appurtenances, to the said James Reynolds and his heirs forever.

In witness whereof, the said Patrick Henry, esq'r, governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 18th day of May, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY.

A copy. Teste:

J. M. FOSTER, *Reg. L. Off.*

Also the following plat and certificate of survey, in the name of Philip and James Moore and John Donaldson, for 50,000 acres of land, viz: (as laid down on the following page.)

[For plat see original.]

Survey of Philip and James Moore, viz:

LINCOLN COUNTY, *State of Virginia.*

Surveyed for Philip and James Moore, and John Donaldson, 50,000 acres of land on twelve Treasury warrants, No. 16,237, 16,197, 16,239, 16,157, 20,001, 16,488, 16,238, 16,135, 16,240, 16,235, 15,800, 15,737, entered the 5th June, 1784. Beginning one mile from the mouth of Sexton's creek, the waters of Kentucky river, in the county aforesaid, at A, at which beginning there *is* three poplars and two sugar trees, and running thence south 20 east, 3,840 poles to B, crossing the creek at 20 poles, and one at 900 poles to white oak and two beeches; thence south 70 west, 2,083 poles, to three white oaks at C; thence N. 20 west, 3,840 poles, crossing two creeks, one at 80 poles, and one at 3,040 poles, to two poplars and *an* white oak, at D, and thence N. 70 E., 2,083, to the beginning. Surveyed this 18th day of June, 1784.

DANIEL BOONE, *D. S.* for
JAMES THOMPSON, *S. L. C.*

WM. BROOKS,
SEPTIMUS DAVIS, *C. Men.*
EDWARD CALLOWAY, *marker.*

Variation 2¼ east; scale of 200 poles per inch.
A copy. Attest: JNO. M. FOSTER, *R. L. Off.*

Also, the following deed from James Reynolds to John Savery de Valcoulan, executed in Philadelphia, viz:

This indenture made the 15th day of September, in the year of our Lord one thousand seven hundred and eighty-six, between James Reynolds, of the city of Philadelphia, of the one part, and John Savery de Valcoulan, of Richmond, State of Virginia, of the other part; whereas, in and by articles of an agreement, entered into the twelfth day of December, one thousand seven hundred and eighty-three, made between John Philips, John Young, jun'r, Moses Bartram, Benjamin Say, William C. Buller, Ramsey & Cox, William McMurtry, John Pringle, the said James Reynolds, John Marie, William Comstable, Dominick and Edward Joice, Charles Young, Peter Whitesides, Claudius Pane Raquit, Henry Livers Charton, David D. Barthold, John Donaldson, John Mitchell, Philip and James Moore, James Craig, sen'r, William Forbis, Charles Miller, James Butland, Jacob Weaver and William Sykisall, then of the city of Philadelphia, of the one part, and Richard Ellis, then of Cecil county, of Maryland, of the other part; it is witnessed, that the said parties of the first part, had purchased and secured to themselves Treasury land warrants issued by the State of Virginia, for divers quantities of land in the said indenture specified, to the amount of four hundred and fifty-five thousand acres in the whole, whereof the share or proportion of the said Henry Livers Charlton, amounted to sixteen thousand acres; and thereupon it was by the said indenture concluded and agreed upon, between all the said parties thereto, in substance, that the said Richard Ellis, should forthwith proceed under the direction of the surveyor general of Virginia, to survey, locate, and ap-

propriate the said four hundred and fifty-five thousand acres of land, under and by virtue of the said warrant, as near to the waters of the river Ohio, as vacant land could be found and discovered, in such tracts and quantities together, as should appear to the said Richard Ellis to be most advantageous to the parties of the second part, which tracts should be laid off into other tracts not to exceed ten thousand acres each, and divided amongst the parties concerned by ballott; and that he should cause and procure the surveys so made, to be lodged in the proper office in Virginia, and a duplicate thereof to be forwarded to the said parties at Philadelphia; and that the said parties of the second part should pay to the said Richard Ellis, after the rates of ten Spanish dollars for every thousand acres of the land so to be surveyed and located, whereout the said Richard Ellis was to pay all expenses attendant on the business, save pattenting the said land; one half of the said money to be paid in hand, and the other half when the business should be completed: and by the said indenture it was further agreed, that the said Richard Ellis shall be entitled to one third part of all the land he should survey and locate, under the warrants therein specified, the expense of patenting all of which third part should be paid by the parties of the first part, and each of the said parties of the first part did thereby covenant to release and convey to the said Richard Ellis, in fee simple, the said third part of all the land they should be entitled to by virtue thereof; and the said Richard Ellis should be entitled to a draw with the parties of the first, for the third part of the whole to be conveyed to him; and to expedite and render practicable a division of the said land—

It was covenanted, contracted and agreed, by all the parties to that indenture, that whenever a majority of the company, or their legal representatives, should think a division necessary of all or such parts of the said land which the said Richard Ellis should have located and surveyed, and properly certified, they, the said majority should be, and were thereby, vested with full powers and authority to call a meeting of all parties to that indenture, or as many of them or their attornies, or other legal representatives, as conveniently could be summoned in the city of Philadelphia, of which meeting five days notice at least shall be given in writing by a person to be appointed by the said majority, specifying the time and place of meeting, and the business intended; at which time and place, one person should be nominated by the parties concerned, that should attend to represent and draw for the share or shares of the absentees, who should not be otherwise represented, and the division so made should be final and conclusive, unless the said parties should by some other instrument, under hand and seal, agree and determine on some other mode of division as in and by the said indentures, intended to be recorded for safe keeping at Philadelphia, among other things fully appears; and whereas said Richard Ellis, in part execution of the said contract on his part, did cause and procure five large tracts of land, situate in the counties of Fayette and Lincoln, in the State of Virginia, to be surveyed, located, and entered into the proper office in Vir-

ginia, under and by virtue of some of the warrants in the indenture specified, and containing in the whole three hundred and four thousand two hundred and forty acres of land or thereabouts, being somewhat more than two third parts of the said quantity of four hundred and fifty-five thousand acres in the whole of the said warrants specified. And whereas, in and by a certain other indenture, dated the twelfth day of March, one thousand seven hundred and eighty-five, made between the said Richard Ellis of the one part, and the said company of the other part, it was amongst other things agreed, that the said five great tracts of land should be and remain the sole and absolute property of the said company, and should be divided amongst them, according to their several shares and proportions, in full of their two third parts of and in the said whole quantity of four hundred and fifty-five thousand acres then unlocated, but remaining due on the said warrants, were allotted and assigned to the said Richard Ellis in full of his one-third part thereof, as in and by the said indenture, intended also to be recorded at Philadelphia, fully appears.

And whereas the said company, or such or so many of them whose names were used in the return of the surveys of the said five several large tracts of land, amounting to three hundred and four thousand two hundred and forty acres, or assignees of the original grantees of the warrants under which the same were surveyed, did, by endorsement made on the several surveys and returns thereof, under their hands and seals, duly executed, assigned, transfer, and set over the said surveys, and all the said five tracts of land therein contained, amounting to three hundred and four thousand two hundred and forty acres, to the said James Reynolds, to the end and intent that patents for the same might be granted to him and his heirs by the governor of Virginia; and the said James Reynolds, by indenture between himself of the one part, and the members of the said company of the other part, dated the 23d day of December last, *resiting* the said assignment, so to him made, and the intent and meaning thereof, did covenant and agree, to and with the said owners, their heirs and assigns, that he would hold the same in trust for the uses and trusts in the above recited indenture, and if grants should issue to him, his heirs or assigns, for the said land from the State of Virginia, or whenever they should be divided among the parties thereof, he, the said James Reynolds, or his heirs, should and would execute deeds of conveyance in severalty to each of the said proprietors, their heirs or assigns, respectively, at his or their proper costs and charges, for such parts or parcels of the said land as may be allotted to them respectively, each paying his or their proportion of the expense of the procuring such grants, as in and by the said indenture, intended to be recorded in Philadelphia, fully appears.

And whereas, in persuance of the said assignments of the said surveys to the said James Reynolds, three several patents or grants, bearing date the eighteenth day of May last past, have issued to the said James Reynolds, under the hand of Patrick Henry, esq., governor, and the lesser seal of the Commonwealth of Virginia, for three of the said five tracts

of land, viz: one of them situated in the county of Lincoln, containing sixty-one thousand nine hundred and fifty-eight acres; one other of them in Fayette county, containing one hundred and twenty-six thousand one hundred and forty acres; and the other of them in Fayette county, containing fifty thousand acres; and there remains yet one tract of sixteen thousand one hundred and forty-two acres, situate in Lincoln county aforesaid, for which a patent or grant is shortly expected to issue to the said James Reynolds; the other tract of fifty thousand acres, situate in Lincoln county aforesaid, having been assigned by the said James Reynolds, with the approbation of a general meeting of the said company, to Benjamin Wynkoop, who purchased twenty thousand acres from the said James Craig, twenty thousand acres more from the said William McMurtree, and ten thousand acres from the said John Phillips; and the patent has immediately issued to the said Benjamin Wynkoop, in full satisfaction of his said three purchases of fifty thousand acres.

And whereas, the said Henry Lewis De Charton, who was an original proprietor of the said company, and put into the stock thereof warrants to the amount of sixteen thousand acres, and was entitled to ten thousand six hundred and sixty-six acres and two-thirds of an acre of nett land thereout, did, by his assignment, dated the 3d day of January last past, assign and transfer six hundred and sixty-six acres and two thirds of an acre of the nett lands of him belonging, to John Phillips and Benjamin Wynkoop, and remained entitled to ten thousand acres only.

And whereas, the said Henry Lewis Charton acted only by procuration or letter of attorney, from and under the said John Savery De Vancolan, and by note in writing under his hand, written upon the division thereinafter mentioned, at a general meeting of the proprietors, did declare, that the land drawn in the said company belonged to the said John Savery De Vancolan, and that the deed for the same ought to be made in his name, as by the said paper of division, now produced, fully appears, to the said James Reynolds, who was present at the said meeting, and knows the fact of his own knowledge, and which also appears from the original articles of agreement, which are subscribed by the said Henry Lewis Charlton, with the addition of these words—by procuration from John Savery de Vancolan.

And whereas, at a general meeting of the said company, held the 26th day of January last past, in persuance of the provisions made in the first above recited indenture, at the City tavern of Philadelphia, whereof due notice was given in manner aforesaid, and at which meeting, a great majority, both in number and quantity of land, was met and fully represented, the said four tracts of land (having been previously laid off into smaller lots or tracts, so as to be capable of a division) were fairly and equally parted and divided to and amongst the several proprietors and owners, according to their several shares and proportions thereof; and the lots and tracts of land hereinafter described, were allotted and assigned to the said John Savery de Vancoulan, in full of the ten thousand acres to him belonging, in manner aforesaid.

Now this indenture witnesseth, that the said James Reynolds, in performance of the trust in him reposed, and of the covenant in the said

recited indenture, on his part contained, for, and in consideration of, the sum of five shillings, to him in hand paid at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath, and by these presents doth grant, bargain, and sell, alien, enfeoff, release, and confirm, to the said John Savery de Vancaulin, his heirs and assigns forever, all that tract of land, part of the said great tract of one hundred and twenty-six thousand five hundred and forty-seven acres, situate in the county of Fayette, in the State of Virginia, which, in the general place of division thereof, is marked No. 23, beginning at a corner of lot No. 22, allotted to Charles Miller; thence extending by the same, south eighty-one degrees west, one thousand five hundred and seventy-four perches, to a corner of lot No. 12, allotted to William Constable; thence by the same, south nine degrees east, five hundred and eight perches and five-tenths of a perch, to a corner of lot No. 24, allotted to Ramsey and Cox; thence by the same, north eighty-one degrees east, one thousand five hundred and seventy-four perches, to a corner thereof; thence north nine degrees west, five hundred and eight perches and five-tenths of a perch, to the place of beginning; containing five thousand acres. And all that other lot, part of the said great tract, containing sixty-one thousand nine hundred and fifty-eight acres, situate in the county of Lincoln, in the State of Virginia, which, in the general plot of the division thereof is marked No. 49, beginning at a corner of lot No. 60, allotted to John Phillips and Benjamin Wynkoop; thence extending south seventy degrees west, one thousand seven hundred perches, to a corner; thence north twenty degrees west, four hundred and seventy-five perches and eight-tenths of a pearch, to a corner of a lot No. 50, allotted to Phillip and James Moore; thence by the same, north 79° east, one thousand five hundred and seventy-four perches, to lot No. 60; thence by the same, south twenty degrees east, four hundred and seventy-five perches and eight-tenths of a perch, to the place of beginning, containing five thousand acres, be the same more or less; together with all and singular the woods, ways, waters, water-courses, rights, libertys, privileges, immunities, hereditaments, and appertenances whatsoever, to the same belonging; and the revisions, remainders, rents, issues, and profits thereof; and all the estate, right, title, and interest of him, the said James Reynolds, of, in, and out of the same; to have and to hold the said two tracts of land, with the appertenances to the said John Savery de Vancorlin, his heirs and assigns, to his and their proper use and behoof forever; and the said James Reynolds, and his heirs, the hereby granted premises, with the appertenances, to the said John Savery de Vancoulin, his heirs and assigns, against himself and his heirs, and all other persons claiming under him or them, and not otherwise, shall and will warrant and forever defend.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals, the day and year first above written.

JAMES REYNOLDS. [L. S.]

Sealed and delivered in presence of—

JOHN PHILLIPS,

THOMAS REYNOLDS.

Philadelphia county, sct:

Before us, the subscribers, two of the justices of the court of common pleas, as also justices *of the for the* county of Philadelphia, personally came James Reynolds, in the above indenture named, and in due form of law acknowledged the same as his act and deed.

In witness whereof, we have hereunto set our hands and seals, the fifteenth day of September, in the year of our Lord one thousand seven hundred and eighty-six.

JOHN GILL, [L. S.]
WM. POLLARD. [L. S.]

Philadelphia county, sct:

I, Jonathan Bayard Smith, esq., prothonotary of the court of common pleas for the county of Philadelphia, do hereby certify, that John Gill and William Pollard, esqrs., the persons takeing and subscribeing the foregoing acknowledgement, are, and at the time of taking the same were, judges of the court of common pleas, as also justices of the peace for the said county, as by their commissions, remaining of record in my office, fully appears; and that to all acts and

NOTE!—(This space is occasioned by the loss of three pages from the original record, which were torn out before the same was filed.)

(Bill of exceptions continued.)

Also, the following deposition of Thomas Cumpston, taken in Philadelphia, viz:

Depositions of witnesses produced, sworn, and examined on the 17th day of March, in the year 1817, at the office of Robert Wharton, esq., mayor of the city of Philadelphia, situated in the said city, by virtue of a commission issued out of the Clay circuit court, for the county of Clay, in the State of Kentucky, in a cause then depending between John Doe, on the demise of Robert Alexander, and the heirs of James Reynolds, dec'd, plaintiff, and James Garrard and others, defendants.

Thomas Cumpston, of the city of Philadelphia, merchant, aged sixty-two years and upwards, being produced, sworn, and examined, for and on behalf of the plaintiffs, deposeth as followeth: that he hath been acquainted with the family of James Reynolds, deceased, who was formerly a carver and gilder, residing in the said city for upwards of forty years; that he, the said James Reynolds, has been dead for upwards of twenty years; that the deponent was at the bed-side of the said James Reynolds when he died, and that at the time of his said decease, he left five children, that is to say, Ann, (now the wife of Dr. Edward Cutbush, of the navy, at Washington city,) Elizabeth, now the wife of James Reese of New York, James Reynolds, now of Geneva, in the interior of the State of New York, Henry, now living in Philadelphia, and Sarah Reynolds.

THOMAS CUMPSTON.

Sworn and subscribed on the day and place within mentioned, before me,

ROBERT WHARTON, *Mayor.*

COMMONWEALTH OF PENNSYLVANIA,
City of Philadelphia, sct:

I, Robert Wharton, mayor of the city of Philadelphia, do certify that, on the seventeenth day of March, in the year eighteen hundred and seventeen, personally appeared before me, at my office in the said city, the within named Thomas Cumpston *and William Rawle*, who were respectively sworn and affirmed to the foregoing depositions, agreeable to the annexed commission issuing out of the Clay county circuit court for the State of Kentucky.

In testimony whereof, I have hereunto set my hand, and caused the [CITY SEAL.] seal of the said city to be hereunto affixed, the day and year aforesaid. ROBERT WORTON, *Mayor.*

Also an attested copy of the will of John Savery, in these words, viz:

Full of confidence in the misrecorde of my God, I, [the] undersigned John Savary, born in Lyon, in France, came in America in the year one thousand seven hundred and eighty-three, and became some years after a citizen of the United States by my oath of allegiance, at Morganstown, in Virginia State, and now established in Millersburgh, Bourbon county, Kentucky State, being on the point of starting for New Orleans, and being desirous, in case of natural or accidental death, to leave after me a full, free, and *eru*voidable declaration of my permanent intentions, I give, devise, and bequeath, to my respected able friend Robert Alexander, of Woodford county, now president of the State bank, and to his heirs forever, all my land, tenements, and hereditaments, either in this State or Virginia, Pennsylvania, and Ohio State, goods, and chattels, including all my estate, real, personal, and mixed, of whatever kind it may be in the United States, and wherever situated or found in America, to hold and enjoy, or dispose as of his absolute and unconditional property; I constitute and appoint my good friend Lewis Vimont, of Millersburg, Kentucky, who is fully acquainted with all my business, the executor of my last will and testament. I direct him to pay all my just debts; I authorise him to settle and adjust, by compromise, arbitration, or otherwise, without suit, (if possible,) any controversy relative to any part of my estate which he, as my executor, may have to attend to. I also authorise him to empower any person he may deem proper, to transact any part of the duties which may devolve on him as my executor.

In consequence, I have set my hand, and affixed my seal to my present last will, all written with my own hand, this twenty-sixth day of February, of the year one thousand eight hundred and eight.

J. SAVARY. [L. S.]

Witness—GEORGE MADISON,
JOHN T. PENDLETON,
JOHN P. THOMAS.

BOURBON COUNTY, *Clerk's office, sct:*

Nov. ct., 1814.

This last will and testament of John Savary, deceased, was produced

into court, and approved according to law by the oath of George Madison and John T. Pendleton, subscribing witnesses thereto, and sworn to by Lewis Vimont, the executor named therein, and is thereupon duly recorded in this office.

Att: THOS. P. SMITH, *D. C. B. C.*

STATE OF KENTUCKY:

I, Thomas P. Smith, clerk of the county court of Bourbon, in the State aforesaid, do certify, that the foregoing copy of the last will and testament of John Savary, deceased, is truly transcribed from the record in my office; which is certified to all whom it may concern.

In testimony whereof, I have hereunto set my hand, and affixed my [L. S.] seal of office, this 28th day of September, 1816, and the 25th year of the Commonwealth.

THOS. P. SMITH.

(Exceptions continued.)

Septimus Davis was introduced and sworn, who deposed, to the best of his remembrance. About the time of the date of the survey of 50,000 acres in the name of Phillip & James Moore and John Donaldson, above, he attended on Colonel Daniel Boone as one of the chainmen; that they made the beginning corner of said survey at the point shewed to Andrew Bradley as such beginning; that they were engaged one day, or one day and a piece, in making said survey; that he does not recollect distinctly what Boone called the creek, but was under the impression he called it Sexton's or Saxton's creek, but well recollects Boon's son called it Saxton's creek, and told him why it was so called; that he never was on said creek before the time of making said survey, and was never on it again until the year 1806, when called upon to shew said beginning; and, upon being interrogated, said he had no doubt but that the place shown the surveyor was the said place of beginning.

Andrew Bradley, the surveyor, was introduced and sworn, who deposed in substance that, at the place shewn him by Septimus Davis, as the corner of Philip and James Moore and John Donaldson's survey of 50,000 acres, he found a poplar tree, marked as a corner tree, but that there was no other trees then marked as corner trees; that there were a few trees marked off from said tree pointing the course of the two lines; that he reversed the courses of said surveys of 50,000 acres, beginning at the poplar aforesaid, and ran to figure 8 on the plat, and from thence to figure 9; that he did not find any other corners, nor did he find any other trees marked as line trees, than those above mentioned; that he ran and laid down the places representing the dwellings of the defendants in the manner stated in his report; that he never saw any line or corner for the survey of 61,958 acres; that the crossing of the water courses on the lines of the 50,000 acre survey did not correspond with the representation in the certificate of survey; that it is 25 poles instead of 20 to the first crossing mentioned; that he, on a former occasion, run the course and distance of the 50,000 acre survey from 7 to 10, and

found the crossing of a creek to be 1,090 poles instead of 900; that there is an entire repugnance between the waters represented on the line from 9 to 8 as ran by him, and the certificate of survey; that he, in running, crossed Goose creek five times, and crossed no other creek except some very small branches of Sexton's creek.

The foregoing was all the evidence adduced on the trial; and the jury having retired to consider of their verdict, returned afterwards with a verdict for the defendants; upon which the plaintiffs, by their attorney, moved the court for a new trial upon the grounds of the verdict being against law and the evidence in the case, which motion was overruled by the court; to which opinion of the court the plaintiff, by his attorney, excepts and prays that this his bill of exceptions may be signed, sealed, and enrolled, &c.; and it is done

THOMAS MONTGOMERY. [SEAL.]

William Rawle, of the city of Philadelphia, counsellor at law, aged fifty-seven years and upwards, conscientiously scrupulous of taking an oath, on his solemn*ly* affirmation, according to law, affirms, and saith, that he was well acquainted with James Reynolds of the city of Philadelphia, carver and gilder; that his acquaintance with him commenced in the year 1783, when he lived as a tenant in a house in Philadelphia belonging to the wife of this affirmant; that he removed from that house about the year 1790, and is since deceased. This affirmant well remembers that the said James Reynolds had five children, to wit: one who married Dr. Edward Cutbush; Elizabeth, who married James Reese; Sarah, who this affirmant believes is still unmarried; two sons, the youngest named Henry; in respect to the name of the other son, the affirmant always believed was Thomas, but in this he may be mistaken; and further he saith not.

W. RAWLE.

Affirmed and subscribed to, on the day and place within mentioned, before me,

ROBERT WHORTEN, *Mayor.*

I authorise Abner Baker to sign my name to an appeal bond, upon an appeal prayed from the Clay circuit court, Doe on the demise of Alexander and others, against James Garrard, sen'r, & Sons, and his act shall be as binding as if executed by me personally.

Signed this 16th day of April, 1817.

T. QUARLES, Jn'r.

ROB. P. LETCHER.

Know all men by these presents that I, Tunstall Quarles, for and in behalf of Robert Alexander, acknowledge myself indebted to James Garrard, sen'r, James Garrard, jn'r, William Garrard and Daniel Garrard, in the penal sum of $500; which payment, well and truly to be made, I bind myself, my heirs, &c., jointly and severally, firmly by these presents. Sealed with my seal, and dated this 16th day of April, 1817.

The condition of this obligation is such, that whereas the above named Robert Alexander, &c., brought their writ of ejectment, in the Clay circuit court, against the said James Garrard and Sons, as aforesaid, and others, and upon the trial thereof, the verdict returned by the jury therein, and the judgment of the court thereon rendered, was for the defendants.

Whereupon the plaintiff, Robert Alexander, by his attorney, prayed an appeal from the judgment of this court to the court of appeals, which was granted; and by the agreement of the parties, Tunstall Quarles, for Robert Alexander, bound himself to pay all costs that should accrue in consequence of said appeal. Now, should said Tunstall Quarles and Robert Alexander, or either of them, duly prosecute said appeal, and satisfy and pay all costs that shall accrue in consequence thereof, then this obligation to be void, otherwise to remain in full force and virtue.

TUNSTALL QUARLES, for
ROBERT ALEXANDER, [SEAL.]
By ABNER BAKER.

STATE OF KENTUCKY, *Clay county and circuit, sct:*

I, Abner Baker, clerk of the Clay circuit court, certify, that the fifty-three foregoing pages contains a transcript of the record of this case in my office.

In testimony whereof, I have hereto *set* my hand, and caused the [L. S.] seal of the said county, to be hereto affixed, on the 14th day of June, 1817.

A. BAKER.

Surveys marked (M,) viz:

February 4th, 1782.

Goodrich Crump enters 1,000 acres of land upon part of a Treasury warrant, No. 6,642, lying on the South fork of the Kentucky river above the three forks of the said river, beginning on the south side of the said fork 100 poles below the mouth of Buffaloe creek; then to run east, crossing the South fork, 400 poles; then S. 400 poles, to include the quantity.

A copy. Attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

June 13th, 1782.

Francis Clark enters 1,000 acres of land upon two Treasury warrants, No. 4,964 and 4,967, lying on the South fork of the Kentucky river, beginning about ¾ of a mile below the main fork of the South fork; then to extend a line square across the river to the hills on each side; thence to run up on both sides of the river and fork, for quantity, and binding on the *his* as above.

A copy. Attest: JAMES ROBERTSON, *R. L. Off.*
By E. A. MACURDY, *D. R.*

Entry marked (N,) viz:

May 23*d*, 1782.

James Garrard enters 500 acres of land on part of a Treasury warrant, No. 10,100, lying on Goose creek, below the forks of said creek, to begin at the fork, and to extend down the creek on both sides thereof, to include a Buffaloe lick, and the body of the survey to lie below the lick.

A copy. Attest: JAMES ROBERTSON, *R. L. O.*
By RICH'D LONG, *D. R.*

Patent marked (O,) viz:

James Garrard, esq., governor of the Commonwealth of Kentucky, to all to whom these presents shall come greeting:

Know ye, that by virtue and in consideration of part of a land office Treasury warrant, No. 10,100, entered the 23d day of May, 1782, there is granted by the said Commonwealth, unto James Garrard, a certain tract or parcel of land, containing five hundred acres by survey, bearing date the 22d day of September, one thousand seven hundred and ninety-eight, lying and being in the county of Madison, on Goose creek, below the forks of said creek, including a buffaloe lick, &c., and bounded as followeth, to wit: beginning at a Sycamore tree in the forks of said river; thence S. 85 E., 82 poles, to a sugar tree on the bank of said river; thence N. 5 E., 489 poles, to a black oak; thence N. 85° W., 163 poles, crossing the river to a white oak and dogwood; thence S. 5 W., 489 poles, to a beech and sugar tree; thence S. 85 E., 81 poles, to the beginning, with its appertenances; to have and to hold the said tract or parcel of land, with its appertenances, to the said James Garrard, and his heirs forever.

In witness whereof, the said James Garrard, esq., governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed, at Frankfort, on the 25th day of July, in the year of our Lord one thousand seven hundred and ninety-nine, and of the Commonwealth the eighth.

By the governor: JAMES GARRARD.
HARVEY TOULMAN, *Secretary.*

A copy—Attest: JAMES ROBERTSON, *R. L. O.*
By RICHARD LONG, *D. R.*

Instructions asked by plaintiff, marked (1,) *viz:*

REYNOLDS against GARRARD.

The plaintiff moves the court to instruct the jury, that if they find the *beging* corner of the patent to Benja. Wynkoop at the point designated on the connected platts, returned in the cause by Gilbert, surveyor, as the beginning corner, and that the line south 20 east is marked to Sexton's creek, but find no further lines nor corners marked, that the mode

by which they are to close the lines of said patent is to run the course of the patent calls pursuing the marked lines, and continuing the course south 20 east 3,840 poles to the distance called for in the patent, allowing in measuring of said line for the unevenness of the surface, and then persue the courses and distances of that patent back to the beginning, allowing for the unevenness of the ground over which the lines run.

That they are then to locate the patent to James Reynolds, by beginning at the end of Wynkoop's south 20 E. line, and if they find no lines nor corners marked for that survey to close it, by running the courses and distances called for in the patent, allowing for unevenness of the ground over which the lines run, and that for all the land, which Reynolds's patent covers within the possession of the defendant at the time of the service of the writ, the lessors of the plaintiff hold title, and they ought to find a verdict for four individed fifths for the plaintiff, and the defendant guilty of the trespass as to said four undivided fifths of the land so possessed. To instruct the jury, that if they find from the evidence, that the defendant Garrard was residing on the land within the bounds of the patent, useing and controlling the same by cultivating and making salt, that he is liable, and they ought to find him guilty of the entire trespass, notwithstanding James and William Garrard may have an interest in the fee simple title, or rents, or issues of the land, but did not reside upon, nor occupy any part of it, at the time of the commencement of this suit.

That copies of the entries and surveys are competent evidence to conduce to prove the identity of the land sued for.

"*Instructions substituted*," *marked* (2,) *viz:*

For the plaintiff the court instructed the jury, if the jury find that the corner AB, on the platt of Gilbert, is established as the true beginning corner called for in the 50,000 acre survey, (and patent to Wynkoop,) then a line, south 20° east from that point 3,840 poles long, must be run, to find the beginning corner of the patent for 61,958 acres to James Reynolds. It is to begin at the termination of the first line of the 50,000 acre survey, to find the true place of beginning of the 61,958 acre patent, the jury will ascertain if any part of the line S. 20° E. was run and marked in June, 1784, when the survey bears date; and on which survey and marking the patent is founded; if so, then the marked line must be extended at the same variation of the needle, to the end of the distance of 3,840 poles, and there is the true beginning of the patent to Reynolds.

You are instructed how to find the termination of the aforesaid line, because there was no proof that Daniel Boone, the original surveyor of the 50,000 acre tract, extended the line and made the S. E. *corner*, but the lessors of the plaintiff proved the contrary; that he did not make said corner, where the original surveyors made, on which the patent is founded, but ceased running and marking short of it.

From the place of beginning of the patent for 61,958 acres, if found, the first line will be extended south 20° E., at the same variation of the

first line of the 50,000 acre patent, if there be any variation, and the variation on the other lines will conform to that on the first line, provided there are no marked corners or lines found to exist; each line to be run the number of poles called for in the patent for 61,958 acres.

If by adopting this mode of locating Reynolds' patent, you find that Daniel Garrard's salt works, or other improvements, were on the land when the declaration of ejectment was served on him, and that he conducted said salt works and other improvements at that time, you will find for the lessors of the plaintiff; although Daniel Garrard may have been joint owner and partner with others, in the salt works and improvements, when the declaration was served, and although the defendant did not actually reside on the land in controversy at that time.

That copies of the entries and surveys are competent evidence to conduce to prove the identity of the land.

Instructions asked by defendants, marked (3,) *viz:*

1. That the plaintiff cannot recover on the demise of Cutbush, unless the jury shall find from the evidence *evidence*, that he was married to a daughter of the said pat*t*entee Reynolds on or before the date of his demise, to wit, the 1st day of January, 1815; nor can the plaintiff recover in the demise of Reese, unless they shall find he was married to another daughter of said pat*t*entee, at or before the same day; nor can the plaintiff recover on any of the demises in the declaration, unless the jury shall find from the evidence, that the lessor James Reese was married as aforesaid on or before the 1st day of January, 1815.

Given: J. CATRON.

2d. That the plaintiff cannot recover, unless the jury find from the evidence, that the James Reynolds, under whom the lessors claim, was the same James Reynolds to whom the patent for 61,958 acres of land read in evidence was issued, nor can the plaintiffs recover, unless the jury find from the evidence that the aforesaid patent includes the land in contest.

Modified: J. C.

3d. That the jury should find the patent to include the land actually surveyed by the surveyor at the time of making the survey, on which the patent purports to have issued, if such survey shall be found by the jury to have been actually made; but if the jury find from the evidence, that no such survey was in fact then made, the beginning corner in the patent should be found by the jury to be at the termination of the first line called for in the *entry* read in evidence, and from the termination of that line, the courses and distances called for in the patent, give construction to the survey; and unless the jury find, that when so constructed the survey includes the land in contest or part thereof, they must find for the defendants.

Refused: J. CATRON.

Defendants' instructions, as modified in paper marked (4.)

1. The first instruction asked on part of the defendant is given. The

husband took title from the marriage; but the depositions should be favourably construed.

The jury, after the cause was submitted to them, returned into court and inquired what was meant by the instruction, "but the deposition should be favourably construed," when the court informed them, [that where a suit was brought by A and B, as man and wife, and a witness proved them man and wife, shortly after the suit was brought, without proving the time at which they intermarried, it might well be inferred that they were man and wife when the suit was instituted; and if there was an ambiguity in the deposition of Wm. Rawle, it was in the power of the jury to find that the two femes covert had intermarried before the first of January, 1815.

The court further told the jury that the deposition had been referred to the court on a motion on part of the deft. for a non-suit, for want of proof of heirship and the intermarriage of James Reynolds' daughters at the date of the demise, 1st January, 1815; and it seemed to the court that Wm. Rawle, the witness, referred to who were the heirs of James Reynolds at the time of his death, and not at the time the deposition was taken, and refused the non-suit; but the jury were not bound by the construction given by the court, and could give the deposition any construction they saw proper.]

2d. The second instruction is refused, and the jury instructed instead thereof that, from the constant claim set up in this court, and in this cause for twenty-seven years, that James Reynolds, the ancestor of the lessors, was the grantee of the land in controversy, no proof was necessary, on the trial, to establish the fact; and it must be presumed, as *prima facie* true, that James Reynolds, the father of the lessors, was the grantee, and that it was imposed on the defendant to show that some other James Reynolds was the grantee, if he claimed the fact to be so.

And 2d. That the plaintiff could not recover unless the jury find, from the evidence, that the patent to James Reynolds covers the possessions of the defendant, occupied by him when he was served with the declaration in ejectment.

3d. The third instruction asked by the defendant is refused, and the jury is referred to the first instruction, given on part of the lessors of pl'ff, as the true mode of finding the beginning corner of the grant of 61,958 acres.

UNITED STATES OF AMERICA,
Eighth circuit court, Ky. district, sct:

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do hereby certify that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the suit aforesaid.

In testimony whereof, I have hereunto subscribed my name and af-
[L. S.] fixed the seal of said court, this 22d day of December, A. D. 1842.

JOHN H. HANNA.

Allowed by J. CATRON,
Asso. Jus. S. C. U. S.

Att.: JOHN H. HANNA, *C. C. C. K. D.*

THE UNITED STATES OF AMERICA:

The President of the United States of America, to the judges of the eighth circuit court of the United States of America, holden in and *and* for the district of Kentucky, greeting:

That because in the record and proceedings, and also in rendering a judgment in a suit before them, between John Doe, on the demise of Henry Reynolds, James Reynolds, Edward Cutbush, and Cutbush, his wife, late Reynolds, James Reese, and Reese, his wife, late Reynolds, heirs and representatives of James Reynolds, deceased, plaintiffs, and Daniel Garrard, defendant, in an action of ejectment, manifest error hath intervened, to the great damage of the said Daniel Garrard, as in his complaint hath been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if a judgment thereof be given, then, under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the second Monday in January next, at the city of Washington, the present seat of the National Government; that the record and proceedings aforesaid being inspected, *that* they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court at Washington aforesaid, the 3d day of December, 1842, and in the sixty-seventh year of the independence of the United States.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

To Henry Reynolds, James Reynolds, Edward Cutbush and Cutbush his wife, late Reynolds, James Reese, and Reese his wife, late Reynolds, heirs and representatives of James Reynolds, deceased, lessors of John Doe, and citizens of the State of greeting:

Whereas a writ of error hath been issued by the clerk of the eighth circuit court of the United States of America, in and for the district of Kentucky, by Daniel Garrard, returnable to the Supreme Court of the United States of America, at the city of Washington, the present seat of the General Government, on the second Monday in January next, to reverse a judgment entered up by the said circuit court in an action of ejectment, in which the matter in dispute exceeded the value or sum of two thousand dollars, exclusive of costs, and in which John Doe, on demise of Henry Reynolds, James Reynolds, Edward Cutbush and Cutbush his wife, late Reynolds, James Reese and Reese his wife, late Reynolds, heirs and representatives of James Reynolds, deceased, is plaintiff, and the said Daniel Garrard was defendant.